

AMENDED IN SENATE JUNE 17, 2004  
AMENDED IN SENATE APRIL 22, 2004  
AMENDED IN ASSEMBLY JANUARY 22, 2004  
AMENDED IN ASSEMBLY MAY 7, 2003  
AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1240**

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**Introduced by Assembly Member Mullin**

February 21, 2003

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An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code, *and to amend Section 11105 of the Penal Code*, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1240, as amended, Mullin. Care facilities: criminal record clearances.

Existing law requires, as a condition of the State Department of Social Services or other licensing agency issuing a license, permit, or certificate of approval, as appropriate, for a person to operate or to provide direct care services in a community care facility, residential care facility for persons with a chronic life-threatening illness, residential care facility for the elderly, or day care facility, the fingerprinting of, and criminal record clearance for, applicants and persons to be employed by, reside at, or be present in any of these facilities, except as specified.

*This bill would authorize the Department of Justice to substitute or add either the State Department of Social Services or a county, acting as an agent of the State Department of Social Services, as an authorized recipient of an applicant's criminal history information.*

Under existing law, an individual is required to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility. Under existing law, a violation of that requirement results in the citation of deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation. The department is authorized to assess additional civil penalties for continued violations.

Existing law specifies that a licensee's failure to submit fingerprints to the Department of Justice or to transfer a current criminal record clearance, when required, results in the citation of deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation. The State Department of Social Services is authorized to assess additional civil penalties for continued violations.

Existing law specifies that a licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility shall be grounds for denying an application for, or suspending or revoking, a license.

This bill would enhance the penalties for violating any of the above provisions by providing that a violation results in a citation of deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation, per day, for a maximum of *5 days, or for a maximum of 30 days in the case of a 2nd or subsequent violation*, and *by providing* that a violation be grounds for denying an application for, or suspending or revoking, a license or administrator certificate.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1522 of the Health and Safety Code is  
 2 amended to read:  
 3 1522. The Legislature recognizes the need to generate timely  
 4 and accurate positive fingerprint identification of applicants as a  
 5 condition of issuing licenses, permits, or certificates of approval  
 6 for persons to operate or provide direct care services in a



1 community care facility, foster family home, or a certified family  
2 home of a licensed foster family agency. Therefore, the  
3 Legislature supports the use of the fingerprint live-scan  
4 technology, as identified in the long-range plan of the Department  
5 of Justice for fully automating the processing of fingerprints and  
6 other data by the year 1999, otherwise known as the California  
7 Crime Information Intelligence System (CAL-CII), to be used for  
8 applicant fingerprints. It is the intent of the Legislature in enacting  
9 this section to require the fingerprints of those individuals whose  
10 contact with community care clients may pose a risk to the clients'  
11 health and safety.

12 (a) (1) Before issuing a license or special permit to any person  
13 or persons to operate or manage a community care facility, the  
14 State Department of Social Services shall secure from an  
15 appropriate law enforcement agency a criminal record to  
16 determine whether the applicant or any other person specified in  
17 subdivision (b) has ever been convicted of a crime other than a  
18 minor traffic violation or arrested for any crime specified in  
19 Section 290 of the Penal Code, for violating Section 245 or 273.5  
20 of the Penal Code, subdivision (b) of Section 273a of the Penal  
21 Code, or, prior to January 1, 1994, paragraph (2) of Section 273a  
22 of the Penal Code, or for any crime for which the department  
23 cannot grant an exemption if the person was convicted and the  
24 person has not been exonerated.

25 (2) The criminal history information shall include the full  
26 criminal record, if any, of those persons, and subsequent arrest  
27 information pursuant to Section 11105.2 of the Penal Code.

28 (3) Except during the 2003–04 fiscal year, neither the  
29 Department of Justice nor the State Department of Social Services  
30 may charge a fee for the fingerprinting of an applicant for a license  
31 or special permit to operate a facility providing nonmedical board,  
32 room, and care for six or less children or for obtaining a criminal  
33 record of the applicant pursuant to this section.

34 (4) The following shall apply to the criminal record  
35 information:

36 (A) If the State Department of Social Services finds that the  
37 applicant, or any other person specified in subdivision (b), has  
38 been convicted of a crime other than a minor traffic violation, the  
39 application shall be denied, unless the director grants an  
40 exemption pursuant to subdivision (g).



1 (B) If the State Department of Social Services finds that the  
2 applicant, or any other person specified in subdivision (b) is  
3 awaiting trial for a crime other than a minor traffic violation, the  
4 State Department of Social Services may cease processing the  
5 application until the conclusion of the trial.

6 (C) If no criminal record information has been recorded, the  
7 Department of Justice shall provide the applicant and the State  
8 Department of Social Services with a statement of that fact.

9 (D) If the State Department of Social Services finds after  
10 licensure that the licensee, or any other person specified in  
11 paragraph (2) of subdivision (b), has been convicted of a crime  
12 other than a minor traffic violation, the license may be revoked,  
13 unless the director grants an exemption pursuant to subdivision  
14 (g).

15 (E) An applicant and any other person specified in subdivision  
16 (b) shall submit a second set of fingerprints to the Department of  
17 Justice for the purpose of searching the criminal records of the  
18 Federal Bureau of Investigation, in addition to the criminal records  
19 search required by this subdivision. If an applicant and all other  
20 persons described in subdivision (b) meet all of the conditions for  
21 licensure, except receipt of the Federal Bureau of Investigation's  
22 criminal history information for the applicant or any of the persons  
23 described in subdivision (b), the department may issue a license if  
24 the applicant and each person described in subdivision (b) has  
25 signed and submitted a statement that he or she has never been  
26 convicted of a crime in the United States, other than a traffic  
27 infraction, as defined in paragraph (1) of subdivision (a) of Section  
28 42001 of the Vehicle Code. If, after licensure, the department  
29 determines that the licensee or any other person specified in  
30 subdivision (b) has a criminal record, the license may be revoked  
31 pursuant to Section 1550. The department may also suspend the  
32 license pending an administrative hearing pursuant to Section  
33 1550.5.

34 (b) (1) In addition to the applicant, this section shall be  
35 applicable to criminal convictions of the following persons:

36 (A) Adults responsible for administration or direct supervision  
37 of staff.

38 (B) Any person, other than a client, residing in the facility.

39 (C) Any person who provides client assistance in dressing,  
40 grooming, bathing, or personal hygiene. Any nurse assistant or



1 home health aide meeting the requirements of Section 1338.5 or  
2 1736.6, respectively, who is not employed, retained, or contracted  
3 by the licensee, and who has been certified or recertified on or after  
4 July 1, 1998, shall be deemed to meet the criminal record clearance  
5 requirements of this section. A certified nurse assistant and  
6 certified home health aide who will be providing client assistance  
7 and who falls under this exemption shall provide one copy of his  
8 or her current certification, prior to providing care, to the  
9 community care facility. The facility shall maintain the copy of the  
10 certification on file as long as care is being provided by the  
11 certified nurse assistant or certified home health aide at the facility.  
12 Nothing in this paragraph restricts the right of the department to  
13 exclude a certified nurse assistant or certified home health aide  
14 from a licensed community care facility pursuant to Section 1558.

15 (D) Any staff person, volunteer, or employee who has contact  
16 with the clients.

17 (E) If the applicant is a firm, partnership, association, or  
18 corporation, the chief executive officer or other person serving in  
19 like capacity.

20 (F) Additional officers of the governing body of the applicant,  
21 or other persons with a financial interest in the applicant, as  
22 determined necessary by the department by regulation. The  
23 criteria used in the development of these regulations shall be based  
24 on the person's capability to exercise substantial influence over the  
25 operation of the facility.

26 (2) The following persons are exempt from the requirements  
27 applicable under paragraph (1):

28 (A) A medical professional as defined in department  
29 regulations who holds a valid license or certification from the  
30 person's governing California medical care regulatory entity and  
31 who is not employed, retained, or contracted by the licensee if all  
32 of the following apply:

33 (i) The criminal record of the person has been cleared as a  
34 condition of licensure or certification by the person's governing  
35 California medical care regulatory entity.

36 (ii) The person is providing time-limited specialized clinical  
37 care or services.

38 (iii) The person is providing care or services within the  
39 person's scope of practice.



- 1 (iv) The person is not a community care facility licensee or an  
2 employee of the facility.
- 3 (B) A third-party repair person or similar retained contractor if  
4 all of the following apply:
  - 5 (i) The person is hired for a defined, time-limited job.
  - 6 (ii) The person is not left alone with clients.
  - 7 (iii) When clients are present in the room in which the  
8 repairperson or contractor is working, a staff person who has a  
9 criminal record clearance or exemption is also present.
- 10 (C) Employees of a licensed home health agency and other  
11 members of licensed hospice interdisciplinary teams who have a  
12 contract with a client or resident of the facility and are in the  
13 facility at the request of that client or resident's legal  
14 decisionmaker. The exemption does not apply to a person who is  
15 a community care facility licensee or an employee of the facility.
- 16 (D) Clergy and other spiritual caregivers who are performing  
17 services in common areas of the community care facility or who  
18 are advising an individual client at the request of, or with the  
19 permission of, the client or legal decisionmaker, are exempt from  
20 fingerprint and criminal background check requirements imposed  
21 by community care licensing. This exemption does not apply to a  
22 person who is a community care licensee or employee of the  
23 facility.
- 24 (E) Members of fraternal, service, or similar organizations who  
25 conduct group activities for clients if all of the following apply:
  - 26 (i) Members are not left alone with clients.
  - 27 (ii) Members do not transport clients off the facility premises.
  - 28 (iii) The same organization does not conduct group activities  
29 for clients more often than defined by the department's  
30 regulations.
- 31 (3) In addition to the exemptions in paragraph (2), the  
32 following persons in foster family homes, certified family homes,  
33 and small family homes are exempt from the requirements  
34 applicable under paragraph (1):
  - 35 (A) Adult friends and family of the licensee who come into the  
36 home to visit for a length of time no longer than defined by the  
37 department in regulations, provided that the adult friends and  
38 family of the licensee are not left alone with the foster children.



1 (B) Parents of a foster child's friends when the foster child is  
2 visiting the friend's home and the friend, foster parent, or both are  
3 also present.

4 (4) In addition to the exemptions specified in paragraph (2), the  
5 following persons in adult day care and adult day support centers  
6 are exempt from the requirements applicable under paragraph (1):

7 (A) Unless contraindicated by the client's individualized  
8 program plan (IPP) or needs and service plan, a spouse, significant  
9 other, relative, or close friend of a client, or an attendant or a  
10 facilitator for a client with a developmental disability if the  
11 attendant or facilitator is not employed, retained, or contracted by  
12 the licensee. This exemption applies only if the person is visiting  
13 the client or providing direct care and supervision to the client.

14 (B) A volunteer if all of the following applies:

15 (i) The volunteer is supervised by the licensee or a facility  
16 employee with a criminal record clearance or exemption.

17 (ii) The volunteer is never left alone with clients.

18 (iii) The volunteer does not provide any client assistance with  
19 dressing, grooming, bathing, or personal hygiene other than  
20 washing of hands.

21 (5) (A) In addition to the exemptions specified in paragraph  
22 (2), the following persons in adult residential and social  
23 rehabilitation facilities, unless contraindicated by the client's  
24 individualized program plan (IPP) or needs and services plan, are  
25 exempt from the requirements applicable under paragraph (1): a  
26 spouse, significant other, relative, or close friend of a client, or an  
27 attendant or a facilitator for a client with a developmental  
28 disability if the attendant or facilitator is not employed, retained,  
29 or contracted by the licensee. This exemption applies only if the  
30 person is visiting the client or providing direct care and  
31 supervision to that client.

32 (B) Nothing in this subdivision shall prevent a licensee from  
33 requiring a criminal record clearance of any individual exempt  
34 from the requirements of this section, provided that the individual  
35 has client contact.

36 (6) Any person similar to those described in this subdivision,  
37 as defined by the department in regulations.

38 (c) (1) Subsequent to initial licensure, any person specified in  
39 subdivision (b) and not exempted from fingerprinting shall, as a  
40 condition to employment, residence, or presence in a community



1 care facility, be fingerprinted and sign a declaration under penalty  
2 of perjury regarding any prior criminal convictions. The licensee  
3 shall submit these fingerprints to the Department of Justice, along  
4 with a second set of fingerprints for the purpose of searching the  
5 records of the Federal Bureau of Investigation, or to comply with  
6 paragraph (1) of subdivision (h), prior to the person's  
7 employment, residence, or initial presence in the community care  
8 facility. These fingerprints shall be on a card provided by the State  
9 Department of Social Services or sent by electronic transmission  
10 in a manner approved by the State Department of Social Services  
11 and the Department of Justice for the purpose of obtaining a  
12 permanent set of fingerprints, and shall be submitted to the  
13 Department of Justice by the licensee. A licensee's failure to  
14 submit fingerprints to the Department of Justice or to comply with  
15 paragraph (1) of subdivision (h), as required in this section, shall  
16 result in the citation of a deficiency and the immediate assessment  
17 of civil penalties in the amount of one hundred dollars (\$100) per  
18 violation, per day; *for a maximum of five days, unless the violation*  
19 *is a second or subsequent violation within a 12-month period in*  
20 *which case the civil penalties shall be in the amount of one hundred*  
21 *dollars (\$100) per violation* for a maximum of 30 days, and shall  
22 be grounds for disciplining the licensee pursuant to Section 1550.  
23 The department may assess civil penalties for continued violations  
24 as permitted by Section 1548. The fingerprints shall then be  
25 submitted to the State Department of Social Services for  
26 processing. Upon request of the licensee, who shall enclose a  
27 self-addressed stamped postcard for this purpose, the Department  
28 of Justice shall verify receipt of the fingerprints.

29 (2) Within 14 calendar days of the receipt of the fingerprints,  
30 the Department of Justice shall notify the State Department of  
31 Social Services of the criminal record information, as provided for  
32 in subdivision (a). If no criminal record information has been  
33 recorded, the Department of Justice shall provide the licensee and  
34 the State Department of Social Services with a statement of that  
35 fact within 14 calendar days of receipt of the fingerprints.  
36 Documentation of the individual's clearance or exemption shall be  
37 maintained by the licensee and be available for inspection. If new  
38 fingerprints are required for processing, the Department of Justice  
39 shall, within 14 calendar days from the date of receipt of the  
40 fingerprints, notify the licensee that the fingerprints were illegible.



1 When live-scan technology is operational, as defined in Section  
2 1522.04, the Department of Justice shall notify the State  
3 Department of Social Services, as required by that section, and  
4 shall also notify the licensee by mail, within 14 days of electronic  
5 transmission of the fingerprints to the Department of Justice, if the  
6 person has no criminal history recorded. A violation of the  
7 regulations adopted pursuant to Section 1522.04 shall result in the  
8 citation of a deficiency and an immediate assessment of civil  
9 penalties in the amount of one hundred dollars (\$100) per  
10 violation, per day;*for a maximum of five days, unless the violation*  
11 *is a second or subsequent violation within a 12-month period in*  
12 *which case the civil penalties shall be in the amount of one hundred*  
13 *dollars (\$100) per violation* for a maximum of 30 days, and shall  
14 be grounds for disciplining the licensee pursuant to Section 1550.  
15 The department may assess civil penalties for continued violations  
16 as permitted by Section 1548.

17 (3) Except for persons specified in paragraph (2) of subdivision  
18 (b), the licensee shall endeavor to ascertain the previous  
19 employment history of persons required to be fingerprinted under  
20 this subdivision. If it is determined by the State Department of  
21 Social Services, on the basis of the fingerprints submitted to the  
22 Department of Justice, that the person has been convicted of, or is  
23 awaiting trial for, a sex offense against a minor, or has been  
24 convicted for an offense specified in Section 243.4, 273a, 273d,  
25 273g, or 368 of the Penal Code, or a felony, the State Department  
26 of Social Services shall notify the licensee to act immediately to  
27 terminate the person's employment, remove the person from the  
28 community care facility, or bar the person from entering the  
29 community care facility. The State Department of Social Services  
30 may subsequently grant an exemption pursuant to subdivision (g).  
31 If the conviction or arrest was for another crime, except a minor  
32 traffic violation, the licensee shall, upon notification by the State  
33 Department of Social Services, act immediately to either (1)  
34 terminate the person's employment, remove the person from the  
35 community care facility, or bar the person from entering the  
36 community care facility; or (2) seek an exemption pursuant to  
37 subdivision (g). The State Department of Social Services shall  
38 determine if the person shall be allowed to remain in the facility  
39 until a decision on the exemption is rendered. A licensee's failure  
40 to comply with the department's prohibition of employment,



1 contact with clients, or presence in the facility as required by this  
2 paragraph shall be grounds for disciplining the licensee pursuant  
3 to Section 1550.

4 (4) The department may issue an exemption on its own motion  
5 pursuant to subdivision (g) if the person's criminal history  
6 indicates that the person is of good character based on the age,  
7 seriousness, and frequency of the conviction or convictions. The  
8 department, in consultation with interested parties, shall develop  
9 regulations to establish the criteria to grant an exemption pursuant  
10 to this paragraph.

11 (5) Concurrently with notifying the licensee pursuant to  
12 paragraph (3), the department shall notify the affected individual  
13 of his or her right to seek an exemption pursuant to subdivision (g).  
14 The individual may seek an exemption only if the licensee  
15 terminates the person's employment or removes the person from  
16 the facility after receiving notice from the department pursuant to  
17 paragraph (3).

18 (d) (1) Before issuing a license, special permit, or certificate  
19 of approval to any person or persons to operate or manage a foster  
20 family home or certified family home as described in Section  
21 1506, the State Department of Social Services or other approving  
22 authority shall secure from an appropriate law enforcement  
23 agency a criminal record to determine whether the applicant or any  
24 person specified in subdivision (b) has ever been convicted of a  
25 crime other than a minor traffic violation or arrested for any crime  
26 specified in Section 290 of the Penal Code, for violating Section  
27 245 or 273.5, subdivision (b) of Section 273a or, prior to January  
28 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for  
29 any crime for which the department cannot grant an exemption if  
30 the person was convicted and the person has not been exonerated.

31 (2) The criminal history information shall include the full  
32 criminal record, if any, of those persons.

33 (3) Neither the Department of Justice nor the State Department  
34 of Social Services may charge a fee for the fingerprinting of an  
35 applicant for a license, special permit, or certificate of approval  
36 described in this subdivision. The record, if any, shall be taken into  
37 consideration when evaluating a prospective applicant.

38 (4) The following shall apply to the criminal record  
39 information:



1 (A) If the applicant or other persons specified in subdivision (b)  
2 have convictions that would make the applicant's home unfit as a  
3 foster family home or a certified family home, the license, special  
4 permit, or certificate of approval shall be denied.

5 (B) If the State Department of Social Services finds that the  
6 applicant, or any person specified in subdivision (b) is awaiting  
7 trial for a crime other than a minor traffic violation, the State  
8 Department of Social Services or other approving authority may  
9 cease processing the application until the conclusion of the trial.

10 (C) For the purposes of this subdivision, a criminal record  
11 clearance provided under Section 8712 of the Family Code may  
12 be used by the department or other approving agency.

13 (D) An applicant for a foster family home license or for  
14 certification as a family home, and any other person specified in  
15 subdivision (b), shall submit a set of fingerprints to the Department  
16 of Justice for the purpose of searching the criminal records of the  
17 Federal Bureau of Investigation, in addition to the criminal records  
18 search required by subdivision (a). If an applicant meets all other  
19 conditions for licensure, except receipt of the Federal Bureau of  
20 Investigation's criminal history information for the applicant and  
21 all persons described in subdivision (b), the department may issue  
22 a license, or the foster family agency may issue a certificate of  
23 approval, if the applicant, and each person described in  
24 subdivision (b), has signed and submitted a statement that he or she  
25 has never been convicted of a crime in the United States, other than  
26 a traffic infraction, as defined in paragraph (1) of subdivision (a)  
27 of Section 42001 of the Vehicle Code. If, after licensure or  
28 certification, the department determines that the licensee, certified  
29 foster parent, or any person specified in subdivision (b) has a  
30 criminal record, the license may be revoked pursuant to Section  
31 1550 and the certificate of approval revoked pursuant to  
32 subdivision (b) of Section 1534. The department may also suspend  
33 the license pending an administrative hearing pursuant to Section  
34 1550.5.

35 (5) Any person specified in this subdivision shall, as a part of  
36 the application, be fingerprinted and sign a declaration under  
37 penalty of perjury regarding any prior criminal convictions or  
38 arrests for any crime against a child, spousal or cohabitant abuse  
39 or, any crime for which the department cannot grant an exemption



1 if the person was convicted and shall submit these fingerprints to  
2 the licensing agency or other approving authority.

3 (6) (A) The foster family agency shall obtain fingerprints from  
4 certified home applicants and from persons specified in  
5 subdivision (b) and shall submit them directly to the Department  
6 of Justice or send them by electronic transmission in a manner  
7 approved by the State Department of Social Services. A foster  
8 family home licensee or foster family agency shall submit these  
9 fingerprints to the Department of Justice, along with a second set  
10 of fingerprints for the purpose of searching the records of the  
11 Federal Bureau of Investigation or to comply with paragraph (1)  
12 of subdivision (b) prior to the person's employment, residence, or  
13 initial presence. A foster family agency's failure to submit  
14 fingerprints to the Department of Justice, or comply with  
15 paragraph (1) of subdivision (h), as required in this section, shall  
16 result in a citation of a deficiency, and the immediate civil penalties  
17 of one hundred dollars (\$100) per violation, per day; *for a*  
18 *maximum of five days, unless the violation is a second or*  
19 *subsequent violation within a 12-month period in which case the*  
20 *civil penalties shall be in the amount of one hundred dollars (\$100)*  
21 *per violation* for a maximum of 30 days, and shall be grounds for  
22 disciplining the licensee pursuant to Section 1550. A violation of  
23 the regulation adopted pursuant to Section 1522.04 shall result in  
24 the citation of a deficiency and an immediate assessment of civil  
25 penalties in the amount of one hundred dollars (\$100) per  
26 violation, per day; *for a maximum of five days, unless the violation*  
27 *is a second or subsequent violation within a 12-month period in*  
28 *which case the civil penalties shall be in the amount of one hundred*  
29 *dollars (\$100) per violation* for a maximum of 30 days, and shall  
30 be grounds for disciplining the foster family agency pursuant to  
31 Section 1550. A licensee's failure to submit fingerprints to the  
32 Department of Justice, or comply with paragraph (1) of  
33 subdivision (h), as required in this section, may result in the  
34 citation of a deficiency and immediate civil penalties of one  
35 hundred dollars (\$100) per violation. A licensee's violation of  
36 regulations adopted pursuant to Section 1522.04 may result in the  
37 citation of a deficiency and an immediate assessment of civil  
38 penalties in the amount of one hundred dollars (\$100) per  
39 violation. The State Department of Social Services may assess  
40 penalties for continued violations, as permitted by Section 1548.



1 The fingerprints shall then be submitted to the State Department  
2 of Social Services for processing.

3 (B) Upon request of the licensee, who shall enclose a  
4 self-addressed envelope for this purpose, the Department of  
5 Justice shall verify receipt of the fingerprints. Within five working  
6 days of the receipt of the criminal record or information regarding  
7 criminal convictions from the Department of Justice, the  
8 department shall notify the applicant of any criminal arrests or  
9 convictions. If no arrests or convictions are recorded, the  
10 Department of Justice shall provide the foster family home  
11 licensee or the foster family agency with a statement of that fact  
12 concurrent with providing the information to the State Department  
13 of Social Services.

14 (7) If the State Department of Social Services finds that the  
15 applicant, or any other person specified in subdivision (b), has  
16 been convicted of a crime other than a minor traffic violation, the  
17 application shall be denied, unless the director grants an  
18 exemption pursuant to subdivision (g).

19 (8) If the State Department of Social Services finds after  
20 licensure or the granting of the certificate of approval that the  
21 licensee, certified foster parent, or any other person specified in  
22 paragraph (2) of subdivision (b), has been convicted of a crime  
23 other than a minor traffic violation, the license or certificate of  
24 approval may be revoked by the department or the foster family  
25 agency, whichever is applicable, unless the director grants an  
26 exemption pursuant to subdivision (g). A licensee's failure to  
27 comply with the department's prohibition of employment, contact  
28 with clients, or presence in the facility as required by paragraph (3)  
29 of subdivision (c) shall be grounds for disciplining the licensee  
30 pursuant to Section 1550.

31 (e) The State Department of Social Services may not use a  
32 record of arrest to deny, revoke, or terminate any application,  
33 license, employment, or residence unless the department  
34 investigates the incident and secures evidence, whether or not  
35 related to the incident of arrest, that is admissible in an  
36 administrative hearing to establish conduct by the person that may  
37 pose a risk to the health and safety of any person who is or may  
38 become a client. The State Department of Social Services is  
39 authorized to obtain any arrest or conviction records or reports  
40 from any law enforcement agency as necessary to the performance



1 of its duties to inspect, license, and investigate community care  
2 facilities and individuals associated with a community care  
3 facility.

4 (f) (1) For purposes of this section or any other provision of  
5 this chapter, a conviction means a plea or verdict of guilty or a  
6 conviction following a plea of nolo contendere. Any action that the  
7 State Department of Social Services is permitted to take following  
8 the establishment of a conviction may be taken when the time for  
9 appeal has elapsed, when the judgment of conviction has been  
10 affirmed on appeal, or when an order granting probation is made  
11 suspending the imposition of sentence, notwithstanding a  
12 subsequent order pursuant to Sections 1203.4 and 1203.4a of the  
13 Penal Code permitting the person to withdraw his or her plea of  
14 guilty and to enter a plea of not guilty, or setting aside the verdict  
15 of guilty, or dismissing the accusation, information, or indictment.  
16 For purposes of this section or any other provision of this chapter,  
17 the record of a conviction, or a copy thereof certified by the clerk  
18 of the court or by a judge of the court in which the conviction  
19 occurred, shall be conclusive evidence of the conviction. For  
20 purposes of this section or any other provision of this chapter, the  
21 arrest disposition report certified by the Department of Justice, or  
22 documents admissible in a criminal action pursuant to Section  
23 969b of the Penal Code, shall be prima facie evidence of the  
24 conviction, notwithstanding any other provision of law  
25 prohibiting the admission of these documents in a civil or  
26 administrative action.

27 (2) For purposes of this section or any other provision of this  
28 chapter, the department shall consider criminal convictions from  
29 another state or federal court as if the criminal offense was  
30 committed in this state.

31 (g) (1) After review of the record, the director may grant an  
32 exemption from disqualification for a license or special permit as  
33 specified in paragraphs (1) and (4) of subdivision (a), or for a  
34 license, special permit, or certificate of approval as specified in  
35 paragraphs (4) and (5) of subdivision (d), or for employment,  
36 residence, or presence in a community care facility as specified in  
37 paragraphs (3), (4), and (5) of subdivision (c), if the director has  
38 substantial and convincing evidence to support a reasonable belief  
39 that the applicant and the person convicted of the crime, if other  
40 than the applicant, are of such good character as to justify issuance



1 of the license or special permit or granting an exemption for  
2 purposes of subdivision (c). Except as otherwise provided in this  
3 subdivision, an exemption may not be granted pursuant to this  
4 subdivision if the conviction was for any of the following offenses:

5 (A) (i) An offense specified in Section 220, 243.4, or 264.1,  
6 subdivision (a) of Section 273a or, prior to January 1, 1994,  
7 paragraph (1) of Section 273a, Section 273d, 288, or 289,  
8 subdivision (a) of Section 290, or Section 368 of the Penal Code,  
9 or was a conviction of another crime against an individual  
10 specified in subdivision (c) of Section 667.5 of the Penal Code.

11 (ii) Notwithstanding clause (i), the director may grant an  
12 exemption regarding the conviction for an offense described in  
13 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5  
14 of the Penal Code, if the employee or prospective employee has  
15 been rehabilitated as provided in Section 4852.03 of the Penal  
16 Code, has maintained the conduct required in Section 4852.05 of  
17 the Penal Code for at least 10 years, and has the recommendation  
18 of the district attorney representing the employee's county of  
19 residence, or if the employee or prospective employee has  
20 received a certificate of rehabilitation pursuant to Chapter 3.5  
21 (commencing with Section 4852.01) of Title 6 of Part 3 of the  
22 Penal Code.

23 (B) A felony offense specified in Section 729 of the Business  
24 and Professions Code or Section 206 or 215, subdivision (a) of  
25 Section 347, subdivision (b) of Section 417, or subdivision (a) of  
26 Section 451 of the Penal Code.

27 (2) The department may not prohibit a person from being  
28 employed or having contact with clients in a facility on the basis  
29 of a denied criminal record exemption request or arrest  
30 information unless the department complies with the requirements  
31 of Section 1558.

32 (h) (1) For purposes of compliance with this section, the  
33 department may permit an individual to transfer a current criminal  
34 record clearance, as defined in subdivision (a), from one facility  
35 to another, as long as the criminal record clearance has been  
36 processed through a state licensing district office, and is being  
37 transferred to another facility licensed by a state licensing district  
38 office. The request shall be in writing to the State Department of  
39 Social Services, and shall include a copy of the person's driver's  
40 license or valid identification card issued by the Department of



1 Motor Vehicles, or a valid photo identification issued by another  
2 state or the United States government if the person is not a  
3 California resident. Upon request of the licensee, who shall  
4 enclose a self-addressed envelope for this purpose, the State  
5 Department of Social Services shall verify whether the individual  
6 has a clearance that can be transferred.

7 (2) The State Department of Social Services shall hold criminal  
8 record clearances in its active files for a minimum of two years  
9 after an employee is no longer employed at a licensed facility in  
10 order for the criminal record clearance to be transferred.

11 (i) The full criminal record obtained for purposes of this section  
12 may be used by the department or by a licensed adoption agency  
13 as a clearance required for adoption purposes.

14 (j) If a licensee or facility is required by law to deny  
15 employment or to terminate employment of any employee based  
16 on written notification from the state department that the employee  
17 has a prior criminal conviction or is determined unsuitable for  
18 employment under Section 1558, the licensee or facility shall not  
19 incur civil liability or unemployment insurance liability as a result  
20 of that denial or termination.

21 (k) (1) The Department of Justice shall coordinate with the  
22 State Department of Social Services to establish and implement an  
23 automated live-scan processing system for fingerprints in the  
24 district offices of the Community Care Licensing Division of the  
25 State Department of Social Services by July 1, 1999. These  
26 live-scan processing units shall be connected to the main system  
27 at the Department of Justice by July 1, 1999, and shall become part  
28 of that department's pilot project in accordance with its long-range  
29 plan. The State Department of Social Services may charge a fee for  
30 the costs of processing a set of live-scan fingerprints.

31 (2) The Department of Justice shall provide a report to the  
32 Senate and Assembly fiscal committees, the Assembly Human  
33 Services Committee, and to the Senate Health and Human  
34 Services Committee by April 15, 1999, regarding the completion  
35 of backlogged criminal record clearance requests for all facilities  
36 licensed by the State Department of Social Services and the  
37 progress on implementing the automated live-scan processing  
38 system in the two district offices pursuant to paragraph (1).

39 (l) Amendments to this section made in the 1999 portion of the  
40 1999–2000 Regular Session shall be implemented commencing



1 60 days after the effective date of the act amending this section in  
2 the 1999 portion of the 1999–2000 Regular Session, except that  
3 those provisions for the submission of fingerprints for searching  
4 the records of the Federal Bureau of Investigation shall be  
5 implemented 90 days after the effective date of that act.

6 SEC. 2. Section 1568.09 of the Health and Safety Code is  
7 amended to read:

8 1568.09. It is the intent of the Legislature in enacting this  
9 section to require the fingerprints of those individuals whose  
10 contact with residents of residential care facilities for persons with  
11 a chronic, life-threatening illness may pose a risk to the residents’  
12 health and safety.

13 Therefore, the Legislature supports the use of the fingerprint  
14 live-scan technology, as identified in the long-range plan of the  
15 Department of Justice for fully automating the processing of  
16 fingerprints and other data by the year 1999, otherwise known as  
17 the California Crime Information Intelligence System (CAL-CII),  
18 to be used for applicant fingerprints. It is the intent of the  
19 Legislature, in enacting this section, to require the fingerprints of  
20 those individuals whose contact with community care clients may  
21 pose a risk to the clients’ health and safety.

22 (a) (1) Before issuing a license to any person or persons to  
23 operate or manage a residential care facility, the department shall  
24 secure from an appropriate law enforcement agency a criminal  
25 record to determine whether the applicant or any other person  
26 specified in subdivision (b) has ever been convicted of a crime  
27 other than a minor traffic violation or arrested for any crime  
28 specified in Section 290 of the Penal Code, for violating Section  
29 245 or 273.5, subdivision (b) of Section 273a or, prior to January  
30 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for  
31 any crime for which the department cannot grant an exemption if  
32 the person was convicted and the person has not been exonerated.

33 (2) The criminal history information shall include the full  
34 criminal record if any, of those persons, and subsequent arrest  
35 information pursuant to Section 11105.2 of the Penal Code.

36 (3) The following shall apply to the criminal record  
37 information:

38 (A) If the State Department of Social Services finds that the  
39 applicant or any other person specified in subdivision (b) has been  
40 convicted of a crime, other than a minor traffic violation, the



1 application shall be denied, unless the director grants an  
2 exemption pursuant to subdivision (f).

3 (B) If the State Department of Social Services finds that the  
4 applicant, or any other person specified in subdivision (b) is  
5 awaiting trial for a crime other than a minor traffic violation, the  
6 State Department of Social Services may cease processing the  
7 application until the conclusion of the trial.

8 (C) If no criminal record information has been recorded, the  
9 Department of Justice shall provide the applicant and the State  
10 Department of Social Services with a statement of that fact.

11 (D) If the State Department of Social Services finds after  
12 licensure that the licensee, or any other person specified in  
13 paragraph (2) of subdivision (b), has been convicted of a crime  
14 other than a minor traffic violation, the license may be revoked,  
15 unless the director grants an exemption pursuant to subdivision (f).

16 (E) An applicant and any other person specified in subdivision  
17 (b) shall submit to the Department of Justice a second set of  
18 fingerprints for the purpose of searching the records of the Federal  
19 Bureau of Investigation, in addition to the search required by this  
20 subdivision. If an applicant meets all other conditions for  
21 licensure, except receipt of the Federal Bureau of Investigation's  
22 criminal history information for the applicant and persons listed in  
23 subdivision (b), the department may issue a license if the applicant  
24 and each person described by subdivision (b) has signed and  
25 submitted a statement that he or she has never been convicted of  
26 a crime in the United States, other than a traffic infraction as  
27 defined in paragraph (1) of subdivision (a) of Section 42001 of the  
28 Vehicle Code. If, after licensure, the department determines that  
29 the licensee or person specified in subdivision (b) has a criminal  
30 record, the license may be revoked pursuant to subdivision (a) of  
31 Section 1568.082. The department may also suspend the license  
32 pending an administrative hearing pursuant to subdivision (b) of  
33 Section 1568.082.

34 (b) In addition to the applicant, the provisions of this section  
35 shall be applicable to criminal convictions of the following  
36 persons:

37 (1) Adults responsible for administration or direct supervision  
38 of staff of the facility.

39 (2) Any person, other than a resident, residing in the facility.



1 (3) Any person who provides resident assistance in dressing,  
2 grooming, bathing, or personal hygiene. Any nurse assistant or  
3 home health aide meeting the requirements of Section 1338.5 or  
4 1736.6, respectively, who is not employed, retained, or contracted  
5 by the licensee, and who has been certified or recertified on or after  
6 July 1, 1998, shall be deemed to meet the criminal record clearance  
7 requirements of this section. A certified nurse assistant and  
8 certified home health aide who will be providing client assistance  
9 and who falls under this exemption shall provide one copy of his  
10 or her current certification, prior to providing care, to the  
11 residential care facility for persons with chronic, life-threatening  
12 illness. The facility shall maintain the copy of the certification on  
13 file as long as care is being provided by the certified nurse assistant  
14 or certified home health aide at the facility. Nothing in this  
15 paragraph restricts the right of the department to exclude a  
16 certified nurse assistant or certified home health aide from a  
17 licensed residential care facility for persons with chronic,  
18 life-threatening illness pursuant to Section 1568.092.

19 (4) (A) Any staff person, volunteer, or employee who has  
20 contact with the residents.

21 (B) A volunteer shall be exempt from the requirements of this  
22 subdivision if he or she is a relative, significant other, or close  
23 friend of a client receiving care in the facility and the volunteer  
24 does not provide direct care and supervision of residents. A  
25 volunteer who provides direct care and supervision shall be  
26 exempt if the volunteer is a resident's spouse, significant other,  
27 close friend, or family member and provides direct care and  
28 supervision to that resident only at the request of the resident. The  
29 department may define in regulations persons similar to those  
30 described in this subparagraph who may be exempt from the  
31 requirements of this subdivision.

32 (5) If the applicant is a firm, partnership, association, or  
33 corporation, the chief executive officer or other person serving in  
34 that capacity.

35 (6) Additional officers of the governing body of the applicant,  
36 or other persons with a financial interest in the applicant, as  
37 determined necessary by the department by regulation. The  
38 criteria used in the development of these regulations shall be based  
39 on the person's capability to exercise substantial influence over the  
40 operation of the facility.



1 (c) (1) (A) Subsequent to initial licensure, any person  
2 specified in subdivision (b) and not exempted from fingerprinting  
3 shall, as a condition to employment, residence, or presence in a  
4 residential care facility, be fingerprinted and sign a declaration  
5 under penalty of perjury regarding any prior criminal convictions.  
6 The licensee shall submit these fingerprints to the Department of  
7 Justice, along with a second set of fingerprints, for the purpose of  
8 searching the records of the Federal Bureau of Investigation, or to  
9 comply with paragraph (1) of subdivision (g), prior to the person's  
10 employment, residence, or initial presence in the residential care  
11 facility.

12 (B) These fingerprints shall be on a card provided by the State  
13 Department of Social Services for the purpose of obtaining a  
14 permanent set of fingerprints and submitted to the Department of  
15 Justice by the licensee or sent by electronic transmission in a  
16 manner approved by the State Department of Social Services. A  
17 licensee's failure to submit fingerprints to the Department of  
18 Justice, or to comply with paragraph (1) of subdivision (g), as  
19 required in this section, shall result in the citation of a deficiency  
20 and an immediate assessment of civil penalties in the amount of  
21 one hundred dollars (\$100) per violation, per day; *for a maximum*  
22 *of five days, unless the violation is a second or subsequent*  
23 *violation within a 12-month period in which case the civil*  
24 *penalties shall be in the amount of one hundred dollars (\$100) per*  
25 *violation* for a maximum of 30 days, and shall be grounds for  
26 disciplining the licensee pursuant to Section 1550. The State  
27 Department of Social Services may assess civil penalties for  
28 continued violations as allowed in Section 1568.0822. The  
29 fingerprints shall then be submitted to the State Department of  
30 Social Services for processing. The licensee shall maintain and  
31 make available for inspection documentation of the individual's  
32 clearance or exemption.

33 (2) A violation of the regulations adopted pursuant to Section  
34 1522.04 shall result in the citation of a deficiency and an  
35 immediate assessment of civil penalties in the amount of one  
36 hundred dollars (\$100) per violation per day; *for a maximum of five*  
37 *days, unless the violation is a second or subsequent violation*  
38 *within a 12-month period in which case the civil penalties shall be*  
39 *in the amount of one hundred dollars (\$100) per violation* for a  
40 maximum of 30 days, and shall be grounds for disciplining the



1 licensee pursuant to Section 1550. The department may assess  
2 civil penalties for continued violations as permitted by Section  
3 1568.0822.

4 (3) Within 14 calendar days of the receipt of the fingerprints,  
5 the Department of Justice shall notify the State Department of  
6 Social Services of the criminal record information, as provided for  
7 in this subdivision. If no criminal record information has been  
8 recorded, the Department of Justice shall provide the licensee and  
9 the State Department of Social Services with a statement of that  
10 fact within 14 calendar days of receipt of the fingerprints. If new  
11 fingerprints are required for processing, the Department of Justice  
12 shall, within 14 calendar days from the date of receipt of the  
13 fingerprints, notify the licensee that the fingerprints were illegible.  
14 When live-scan technology is operational, as defined in Section  
15 1522.04, the Department of Justice shall notify the department, as  
16 required by that section, and shall notify the licensee by mail  
17 within 14 days of electronic transmission of the fingerprints to the  
18 Department of Justice, if the person has no criminal history record.

19 (4) Except for persons specified in paragraph (2) of subdivision  
20 (b), the licensee shall endeavor to ascertain the previous  
21 employment history of persons required to be fingerprinted under  
22 this subdivision. If it is determined by the State Department of  
23 Social Services, on the basis of the fingerprints submitted to the  
24 Department of Justice, that the person has been convicted of a sex  
25 offense against a minor, an offense specified in Section 243.4,  
26 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the  
27 department shall notify the licensee to act immediately to  
28 terminate the person's employment, remove the person from the  
29 residential care facility, or bar the person from entering the  
30 residential care facility. The department may subsequently grant  
31 an exemption pursuant to subdivision (f). If the conviction was for  
32 another crime, except a minor traffic violation, the licensee shall,  
33 upon notification by the department, act immediately to either (1)  
34 terminate the person's employment, remove the person from the  
35 residential care facility, or bar the person from entering the  
36 residential care facility; or (2) seek an exemption pursuant to  
37 subdivision (f). The department shall determine if the person shall  
38 be allowed to remain in the facility until a decision on the  
39 exemption is rendered. A licensee's failure to comply with the  
40 department's prohibition of employment, contact with clients, or



1 presence in the facility as required by this paragraph shall result in  
2 a citation of deficiency and an immediate assessment of civil  
3 penalties by the department against the licensee, in the amount of  
4 one hundred dollars (\$100) per violation, per day; *for a maximum*  
5 *of five days, unless the violation is a second or subsequent*  
6 *violation within a 12-month period in which case the civil*  
7 *penalties shall be in the amount of one hundred dollars (\$100) per*  
8 *violation* for a maximum of 30 days, and shall be grounds for  
9 disciplining the licensee pursuant to Section 1568.082.

10 (5) The department may issue an exemption on its own motion  
11 pursuant to subdivision (f) if the person's criminal history  
12 indicates that the person is of good character based on the age,  
13 seriousness, and frequency of the conviction or convictions. The  
14 department, in consultation with interested parties, shall develop  
15 regulations to establish the criteria to grant an exemption pursuant  
16 to this paragraph.

17 (6) Concurrently with notifying the licensee pursuant to  
18 paragraph (4), the department shall notify the affected individual  
19 of his or her right to seek an exemption pursuant to subdivision (f).  
20 The individual may seek an exemption only if the licensee  
21 terminates the person's employment or removes the person from  
22 the facility after receiving notice from the department pursuant to  
23 paragraph (4).

24 (d) (1) For purposes of this section or any other provision of  
25 this chapter, a conviction means a plea or verdict of guilty or a  
26 conviction following a plea of nolo contendere. Any action that the  
27 department is permitted to take following the establishment of a  
28 conviction may be taken when the time for appeal has elapsed,  
29 when the judgment of conviction has been affirmed on appeal, or  
30 when an order granting probation is made suspending the  
31 imposition of the sentence, notwithstanding a subsequent order  
32 pursuant to Sections 1203.4 and 1203.4a of the Penal Code  
33 permitting that person to withdraw his or her plea of guilty and to  
34 enter a plea of not guilty, setting aside the verdict of guilty, or  
35 dismissing the accusation, information, or indictment. For  
36 purposes of this chapter, the record of a conviction, or a copy  
37 thereof certified by the clerk of the court or by a judge of the court  
38 in which the conviction occurred, shall be conclusive evidence of  
39 the conviction. For purposes of this section or any other provision  
40 of this chapter, the arrest disposition report certified by the



1 Department of Justice, or documents admissible in a criminal  
2 action pursuant to Section 969b of the Penal Code, shall be prima  
3 facie evidence of the conviction, notwithstanding any other  
4 provision of law prohibiting the admission of these documents in  
5 a civil or administrative action.

6 (2) For purposes of this section or any other provision of this  
7 chapter, the department shall consider criminal convictions from  
8 another state or federal court as if the criminal offense was  
9 committed in this state.

10 (e) The State Department of Social Services may not use a  
11 record of arrest to deny, revoke, or terminate any application,  
12 license, employment, or residence unless the department  
13 investigates the incident and secures evidence, whether or not  
14 related to the incident of arrest, that is admissible in an  
15 administrative hearing to establish conduct by the person that may  
16 pose a risk to the health and safety of any person who is or may  
17 become a client. The State Department of Social Services is  
18 authorized to obtain any arrest or conviction records or reports  
19 from any law enforcement agency as necessary to the performance  
20 of its duties to inspect, license, and investigate community care  
21 facilities and individuals associated with a community care  
22 facility.

23 (f) (1) After review of the record, the director may grant an  
24 exemption from disqualification for a license as specified in  
25 paragraphs (1) and (4) of subdivision (a), or for employment,  
26 residence, or presence in a residential care facility as specified in  
27 paragraphs (4), (5), and (6) of subdivision (c) if the director has  
28 substantial and convincing evidence to support a reasonable belief  
29 that the applicant and the person convicted of the crime, if other  
30 than the applicant, are of such good character as to justify issuance  
31 of the license or special permit or granting an exemption for  
32 purposes of subdivision (c). However, an exemption may not be  
33 granted pursuant to this subdivision if the conviction was for any  
34 of the following offenses:

35 (A) An offense specified in Section 220, 243.4, or 264.1,  
36 subdivision (a) of Section 273a or, prior to January 1, 1994,  
37 paragraph (1) of Section 273a, Section 273d, 288, or 289,  
38 subdivision (a) of Section 290, or Section 368 of the Penal Code,  
39 or was a conviction of another crime against an individual  
40 specified in subdivision (c) of Section 667.5 of the Penal Code.



1 (B) A felony offense specified in Section 729 of the Business  
2 and Professional Code or Section 206 or 215, subdivision (a) of  
3 Section 347, subdivision (b) of Section 417, or subdivision (a) of  
4 Section 451 of the Penal Code.

5 (2) The department may not prohibit a person from being  
6 employed or having contact with clients in a facility on the basis  
7 of a denied criminal record exemption request or arrest  
8 information unless the department complies with the requirements  
9 of Section 1568.092.

10 (g) (1) For purposes of compliance with this section, the  
11 department may permit an individual to transfer a current criminal  
12 record clearance, as defined in subdivision (a), from one facility  
13 to another, as long as the criminal record clearance has been  
14 processed through a state licensing district office, and is being  
15 transferred to another facility licensed by a state licensing district  
16 office. The request shall be in writing to the department, and shall  
17 include a copy of the person's driver's license or valid  
18 identification card issued by the Department of Motor Vehicles, or  
19 a valid photo identification issued by another state or the United  
20 States government if the person is not a California resident. Upon  
21 request of the licensee, who shall enclose a self-addressed stamped  
22 envelope for this purpose, the department shall verify whether the  
23 individual has a clearance that can be transferred.

24 (2) The State Department of Social Services shall hold criminal  
25 record clearances in its active files for a minimum of two years  
26 after an employee is no longer employed at a licensed facility in  
27 order for the criminal record clearance to be transferred.

28 (h) If a licensee or facility is required by law to deny  
29 employment or to terminate employment of any employee based  
30 on written notification from the state department that the employee  
31 has a prior criminal conviction or is determined unsuitable for  
32 employment under Section 1568.092, the licensee or facility shall  
33 not incur civil liability or unemployment insurance liability as a  
34 result of that denial or termination.

35 (i) (1) The Department of Justice shall charge a fee sufficient  
36 to cover its cost in providing services to comply with the 14-day  
37 requirement contained in subdivision (c) for provision to the  
38 department of criminal record information.

39 (2) Paragraph (1) shall cease to be implemented when the  
40 department adopts emergency regulations pursuant to Section



1 1522.04, and shall become inoperative when permanent  
2 regulations are adopted under that section.

3 (j) Amendments to the provisions of this section made in the  
4 1998 calendar year shall be implemented commencing 60 days  
5 after the effective date of the act amending this section in the 1998  
6 calendar year, except those provisions for the submission of  
7 fingerprints for searching the records of the Federal Bureau of  
8 Investigation, which shall be implemented commencing January  
9 1, 1999.

10 SEC. 3. Section 1569.17 of the Health and Safety Code is  
11 amended to read:

12 1569.17. The Legislature recognizes the need to generate  
13 timely and accurate positive fingerprint identification of  
14 applicants as a condition of issuing licenses, permits, or  
15 certificates of approval for persons to operate or provide direct  
16 care services in a residential care facility for the elderly. The  
17 Legislature supports the use of the fingerprint live-scan  
18 technology, as identified in the long-range plan of the Department  
19 of Justice for fully automating the processing of fingerprints and  
20 other data by the year 1999. It is the intent of the Legislature in  
21 enacting this section to require the fingerprints of those individuals  
22 whose contact with clients of residential care facilities for the  
23 elderly may pose a risk to the clients' health and safety.

24 (a) (1) Before issuing a license to any person or persons to  
25 operate or manage a residential care facility for the elderly, the  
26 department shall secure from an appropriate law enforcement  
27 agency a criminal record to determine whether the applicant or any  
28 other person specified in subdivision (b) has ever been convicted  
29 of a crime other than a minor traffic violation or arrested for any  
30 crime specified in Section 290 of the Penal Code, for violating  
31 Section 245 or 273.5, subdivision (b) of Section 273a or, prior to  
32 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,  
33 or for any crime for which the department cannot grant an  
34 exemption if the person was convicted and the person has not been  
35 exonerated.

36 (2) The criminal history information shall include the full  
37 criminal record, if any, of those persons, and subsequent arrest  
38 information pursuant to Section 11105.2 of the Penal Code.

39 (3) The following shall apply to the criminal record  
40 information:



1 (A) If the State Department of Social Services finds that the  
2 applicant or any other person specified in subdivision (b) has been  
3 convicted of a crime, other than a minor traffic violation, the  
4 application shall be denied, unless the director grants an  
5 exemption pursuant to subdivision (f).

6 (B) If the State Department of Social Services finds that the  
7 applicant, or any other person specified in subdivision (b) is  
8 awaiting trial for a crime other than a minor traffic violation, the  
9 State Department of Social Services may cease processing the  
10 application until the conclusion of the trial.

11 (C) If no criminal record information has been recorded, the  
12 Department of Justice shall provide the applicant and the State  
13 Department of Social Services with a statement of that fact.

14 (D) If the State Department of Social Services finds after  
15 licensure that the licensee, or any other person specified in  
16 paragraph (2) of subdivision (b), has been convicted of a crime  
17 other than a minor traffic violation, the license may be revoked,  
18 unless the director grants an exemption pursuant to subdivision (f).

19 (E) An applicant and any other person specified in subdivision  
20 (b) shall submit a second set of fingerprints to the Department of  
21 Justice, for the purpose of searching the records of the Federal  
22 Bureau of Investigation, in addition to the search required by  
23 subdivision (a). If an applicant meets all other conditions for  
24 licensure, except receipt of the Federal Bureau of Investigation's  
25 criminal history information for the applicant and persons listed in  
26 subdivision (b), the department may issue a license if the applicant  
27 and each person described by subdivision (b) has signed and  
28 submitted a statement that he or she has never been convicted of  
29 a crime in the United States, other than a traffic infraction as  
30 defined in paragraph (1) of subdivision (a) of Section 42001 of the  
31 Vehicle Code. If, after licensure, the department determines that  
32 the licensee or person specified in subdivision (b) has a criminal  
33 record, the license may be revoked pursuant to Section 1569.50.  
34 The department may also suspend the license pending an  
35 administrative hearing pursuant to Sections 1569.50 and 1569.51.

36 (b) In addition to the applicant, the provisions of this section  
37 shall apply to criminal convictions of the following persons:

38 (1) (A) Adults responsible for administration or direct  
39 supervision of staff.



1 (B) Any person, other than a client, residing in the facility.  
2 Residents of unlicensed independent senior housing facilities that  
3 are located in contiguous buildings on the same property as a  
4 residential care facility for the elderly shall be exempt from these  
5 requirements.

6 (C) Any person who provides client assistance in dressing,  
7 grooming, bathing, or personal hygiene. Any nurse assistant or  
8 home health aide meeting the requirements of Section 1338.5 or  
9 1736.6, respectively, who is not employed, retained, or contracted  
10 by the licensee, and who has been certified or recertified on or after  
11 July 1, 1998, shall be deemed to meet the criminal record clearance  
12 requirements of this section. A certified nurse assistant and  
13 certified home health aide who will be providing client assistance  
14 and who falls under this exemption shall provide one copy of his  
15 or her current certification, prior to providing care, to the  
16 residential care facility for the elderly. The facility shall maintain  
17 the copy of the certification on file as long as the care is being  
18 provided by the certified nurse assistant or certified home health  
19 aide at the facility. Nothing in this paragraph restricts the right of  
20 the department to exclude a certified nurse assistant or certified  
21 home health aide from a licensed residential care facility for the  
22 elderly pursuant to Section 1569.58.

23 (D) Any staff person, volunteer, or employee who has contact  
24 with the clients.

25 (E) If the applicant is a firm, partnership, association, or  
26 corporation, the chief executive officer or other person serving in  
27 a similar capacity.

28 (F) Additional officers of the governing body of the applicant  
29 or other persons with a financial interest in the applicant, as  
30 determined necessary by the department by regulation. The  
31 criteria used in the development of these regulations shall be based  
32 on the person's capability to exercise substantial influence over the  
33 operation of the facility.

34 (2) The following persons are exempt from requirements  
35 applicable under paragraph (1):

36 (A) A spouse, relative, significant other, or close friend of a  
37 client shall be exempt if this person is visiting the client or provides  
38 direct care and supervision to that client only.

39 (B) A volunteer to whom all of the following apply:

40 (i) The volunteer is at the facility during normal waking hours.



- 1 (ii) The volunteer is directly supervised by the licensee or a  
2 facility employee with a criminal record clearance or exemption.
- 3 (iii) The volunteer spends no more than 16 hours per week at  
4 the facility.
- 5 (iv) The volunteer does not provide clients with assistance in  
6 dressing, grooming, bathing, or personal hygiene.
- 7 (v) The volunteer is not left alone with clients in care.
- 8 (C) A third-party contractor retained by the facility if the  
9 contractor is not left alone with clients in care.
- 10 (D) A third-party contractor or other business professional  
11 retained by a client and at the facility at the request or by  
12 permission of that client. These individuals may not be left alone  
13 with other clients.
- 14 (E) Licensed or certified medical professionals are exempt  
15 from fingerprint and criminal background check requirements  
16 imposed by community care licensing. This exemption does not  
17 apply to a person who is a community care facility licensee or an  
18 employee of the facility.
- 19 (F) Employees of licensed home health agencies and members  
20 of licensed hospice interdisciplinary teams who have contact with  
21 a resident of a residential care facility at the request of the resident  
22 or resident's legal decisionmaker are exempt from fingerprint and  
23 criminal background check requirements imposed by community  
24 care licensing. This exemption does not apply to a person who is  
25 a community care facility licensee or an employee of the facility.
- 26 (G) Clergy and other spiritual caregivers who are performing  
27 services in common areas of the residential care facility, or who are  
28 advising an individual resident at the request of, or with  
29 permission of, the resident, are exempt from fingerprint and  
30 criminal background check requirements imposed by community  
31 care licensing. This exemption does not apply to a person who is  
32 a community care facility licensee or an employee of the facility.
- 33 (H) Any person similar to those described in this subdivision,  
34 as defined by the department in regulations.
- 35 (I) Nothing in this paragraph shall prevent a licensee from  
36 requiring a criminal record clearance of any individual exempt  
37 from the requirements of this section, provided that the individual  
38 has client contact.
- 39 (c) (1) (A) Subsequent to initial licensure, any person  
40 required to be fingerprinted pursuant to subdivision (b) shall, as a



1 condition to employment, residence, or presence in a residential  
2 facility for the elderly, be fingerprinted and sign a declaration  
3 under penalty of perjury regarding any prior criminal convictions.  
4 The licensee shall submit these fingerprints, along with a second  
5 set of fingerprints for the purpose of searching the records of the  
6 Federal Bureau of Investigation, to the Department of Justice, or  
7 to comply with paragraph (1) of subdivision (g) prior to the  
8 person's employment, residence, or initial presence in the  
9 residential care facility for the elderly.

10 (B) These fingerprints shall be on a fingerprint card provided  
11 by the State Department of Social Services, or sent by electronic  
12 transmission in a manner approved by the State Department of  
13 Social Services and the Department of Justice and submitted to the  
14 Department of Justice by the licensee. A licensee's failure to  
15 submit fingerprints to the Department of Justice, or to comply with  
16 paragraph (1) of subdivision (g), as required in this section, shall  
17 result in the citation of a deficiency and an immediate assessment  
18 of civil penalties in the amount of one hundred dollars (\$100) per  
19 violation, per day;*for a maximum of five days, unless the violation*  
20 *is a second or subsequent violation within a 12-month period in*  
21 *which case the civil penalties shall be in the amount of one hundred*  
22 *dollars (\$100) per violation* for a maximum of 30 days, and shall  
23 be grounds for disciplining the licensee pursuant to Section 1550.  
24 The State Department of Social Services may assess civil penalties  
25 for continued violations as permitted by Section 1569.49. The  
26 licensee shall then submit these fingerprints to the State  
27 Department of Social Services for processing. Documentation of  
28 the individual's clearance or exemption shall be maintained by the  
29 licensee and be available for inspection. When live-scan  
30 technology is operational, as defined in Section 1522.04, the  
31 Department of Justice shall notify the department, as required by  
32 that section, and notify the licensee by mail within 14 days of  
33 electronic transmission of the fingerprints to the Department of  
34 Justice, if the person has no criminal record. A violation of the  
35 regulations adopted pursuant to Section 1522.04 shall result in the  
36 citation of a deficiency and an immediate assessment of civil  
37 penalties in the amount of one hundred dollars (\$100) per  
38 violation, per day;*for a maximum of five days, unless the violation*  
39 *is a second or subsequent violation within a 12-month period in*  
40 *which case the civil penalties shall be in the amount of one hundred*



1 *dollars (\$100) per violation* for a maximum of 30 days, and shall  
2 be grounds for disciplining the licensee pursuant to Section 1550.  
3 The department may assess civil penalties for continued violations  
4 as permitted by Section 1569.49.

5 (2) Within 14 calendar days of the receipt of the fingerprints,  
6 the Department of Justice shall notify the State Department of  
7 Social Services of the criminal record information, as provided for  
8 in this subdivision. If no criminal record information has been  
9 recorded, the Department of Justice shall provide the licensee and  
10 the State Department of Social Services with a statement of that  
11 fact within 14 calendar days of receipt of the fingerprints. If new  
12 fingerprints are required for processing, the Department of Justice  
13 shall, within 14 calendar days from the date of receipt of the  
14 fingerprints, notify the licensee that the fingerprints were illegible.

15 (3) Except for persons specified in paragraph (2) of subdivision  
16 (b), the licensee shall endeavor to ascertain the previous  
17 employment history of persons required to be fingerprinted under  
18 this subdivision. If the State Department of Social Services  
19 determines, on the basis of the fingerprints submitted to the  
20 Department of Justice, that the person has been convicted of a sex  
21 offense against a minor, an offense specified in Section 243.4,  
22 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State  
23 Department of Social Services shall notify the licensee in writing  
24 within 15 calendar days of the receipt of the notification from the  
25 Department of Justice to act immediately to terminate the person's  
26 employment, remove the person from the residential care facility  
27 for the elderly, or bar the person from entering the residential care  
28 facility for the elderly. The State Department of Social Services  
29 may subsequently grant an exemption pursuant to subdivision (f).  
30 If the conviction was for another crime, except a minor traffic  
31 violation, the licensee shall, upon notification by the State  
32 Department of Social Services, act immediately to either (1)  
33 terminate the person's employment, remove the person from the  
34 residential care facility for the elderly, or bar the person from  
35 entering the residential care facility for the elderly or (2) seek an  
36 exemption pursuant to subdivision (f). The department shall  
37 determine if the person shall be allowed to remain in the facility  
38 until a decision on the exemption is rendered by the department.  
39 A licensee's failure to comply with the department's prohibition  
40 of employment, contact with clients, or presence in the facility as



1 required by this paragraph shall result in a citation of deficiency  
2 and an immediate assessment of civil penalties by the department  
3 against the licensee, in the amount of one hundred dollars (\$100)  
4 per violation, per day; *for a maximum of five days, unless the*  
5 *violation is a second or subsequent violation within a 12-month*  
6 *period in which case the civil penalties shall be in the amount of*  
7 *one hundred dollars (\$100) per violation for a maximum of 30*  
8 days, and shall be grounds for disciplining the licensee pursuant  
9 to Section 1569.50.

10 (4) The department may issue an exemption on its own motion  
11 pursuant to subdivision (f) if the person's criminal history  
12 indicates that the person is of good character based on the age,  
13 seriousness, and frequency of the conviction or convictions. The  
14 department, in consultation with interested parties, shall develop  
15 regulations to establish the criteria to grant an exemption pursuant  
16 to this paragraph.

17 (5) Concurrently with notifying the licensee pursuant to  
18 paragraph (4), the department shall notify the affected individual  
19 of his or her right to seek an exemption pursuant to subdivision (f).  
20 The individual may seek an exemption only if the licensee  
21 terminates the person's employment or removes the person from  
22 the facility after receiving notice from the department pursuant to  
23 paragraph (4).

24 (d) (1) For purposes of this section or any other provision of  
25 this chapter, a conviction means a plea or verdict of guilty or a  
26 conviction following a plea of nolo contendere. Any action that the  
27 department is permitted to take following the establishment of a  
28 conviction may be taken when the time for appeal has elapsed,  
29 when the judgment of conviction has been affirmed on appeal or  
30 when an order granting probation is made suspending the  
31 imposition of the sentence, notwithstanding a subsequent order  
32 pursuant to the provisions of Sections 1203.4 and 1203.4a of the  
33 Penal Code permitting a person to withdraw his or her plea of  
34 guilty and to enter a plea of not guilty, or setting aside the verdict  
35 of guilty, or dismissing the accusation, information, or indictment.  
36 For purposes of this section or any other provision of this chapter,  
37 the record of a conviction, or a copy thereof certified by the clerk  
38 of the court or by a judge of the court in which the conviction  
39 occurred, shall be conclusive evidence of the conviction. For  
40 purposes of this section or any other provision of this chapter, the



1 arrest disposition report certified by the Department of Justice or  
2 documents admissible in a criminal action pursuant to Section  
3 969b of the Penal Code shall be prima facie evidence of the  
4 conviction, notwithstanding any other provision of law  
5 prohibiting the admission of these documents in a civil or  
6 administrative action.

7 (2) For purposes of this section or any other provision of this  
8 chapter, the department shall consider criminal convictions from  
9 another state or federal court as if the criminal offense was  
10 committed in this state.

11 (e) The State Department of Social Services may not use a  
12 record of arrest to deny, revoke, or terminate any application,  
13 license, employment, or residence unless the department  
14 investigates the incident and secures evidence, whether or not  
15 related to the incident of arrest, that is admissible in an  
16 administrative hearing to establish conduct by the person that may  
17 pose a risk to the health and safety of any person who is or may  
18 become a client. The State Department of Social Services is  
19 authorized to obtain any arrest or conviction records or reports  
20 from any law enforcement agency as necessary to the performance  
21 of its duties to inspect, license, and investigate community care  
22 facilities and individuals associated with a community care  
23 facility.

24 (f) (1) After review of the record, the director may grant an  
25 exemption from disqualification for a license as specified in  
26 paragraphs (1) and (4) of subdivision (a), or for employment,  
27 residence, or presence in a residential care facility for the elderly  
28 as specified in paragraphs (4), (5), and (6) of subdivision (c) if the  
29 director has substantial and convincing evidence to support a  
30 reasonable belief that the applicant and the person convicted of the  
31 crime, if other than the applicant, are of such good character as to  
32 justify issuance of the license or special permit or granting an  
33 exemption for purposes of subdivision (c). However, an  
34 exemption may not be granted pursuant to this subdivision if the  
35 conviction was for any of the following offenses:

36 (A) An offense specified in Section 220, 243.4, or 264.1,  
37 subdivision (a) of Section 273a or, prior to January 1, 1994,  
38 paragraph (1) of Section 273a, Section 273d, 288, or 289,  
39 subdivision (a) of Section 290, or Section 368 of the Penal Code,



1 or was a conviction of another crime against an individual  
2 specified in subdivision (c) of Section 667.5 of the Penal Code.

3 (B) A felony offense specified in Section 729 of the Business  
4 and Professions Code or Section 206 or 215, subdivision (a) of  
5 Section 347, subdivision (b) of Section 417, or subdivision (a) of  
6 Section 451 of the Penal Code.

7 (2) The director shall notify in writing the licensee or the  
8 applicant of his or her decision within 60 days of receipt of all  
9 information from the applicant and other sources determined  
10 necessary by the director for the rendering of a decision pursuant  
11 to this subdivision.

12 (3) The department may not prohibit a person from being  
13 employed or having contact with clients in a facility on the basis  
14 of a denied criminal record exemption request or arrest  
15 information unless the department complies with the requirements  
16 of Section 1569.58.

17 (g) (1) For purposes of compliance with this section, the  
18 department may permit an individual to transfer a current criminal  
19 record clearance, as defined in subdivision (a), from one facility  
20 to another, as long as the criminal record clearance has been  
21 processed through a state licensing district office, and is being  
22 transferred to another facility licensed by a state licensing district  
23 office. The request shall be submitted in writing to the department,  
24 and shall include a copy of the person's driver's license or valid  
25 identification card issued by the Department of Motor Vehicles, or  
26 a valid photo identification issued by another state or the United  
27 States government if the person is not a California resident. Upon  
28 request of the licensee, who shall enclose a self-addressed stamped  
29 envelope for this purpose, the department shall verify whether the  
30 individual has a clearance that can be transferred.

31 (2) The State Department of Social Services shall hold criminal  
32 record clearances in its active files for a minimum of two years  
33 after an employee is no longer employed at a licensed facility in  
34 order for the criminal record clearances to be transferred under this  
35 section.

36 (h) If a licensee or facility is required by law to deny  
37 employment or to terminate employment of any employee based  
38 on written notification from the department that the employee has  
39 a prior criminal conviction or is determined unsuitable for  
40 employment under Section 1569.58, the licensee or facility shall



1 not incur civil liability or unemployment insurance liability as a  
2 result of that denial or termination.

3 (i) Amendments to the provisions of this section made in the  
4 1998 calendar year shall be implemented commencing 60 days  
5 after the effective date of the act amending this section in the 1998  
6 calendar year, except those provisions for the submission of  
7 fingerprints for searching the records of the Federal Bureau of  
8 Investigation, which shall be implemented commencing on  
9 January 1, 1999.

10 SEC. 4. Section 1596.871 of the Health and Safety Code is  
11 amended to read:

12 1596.871. The Legislature recognizes the need to generate  
13 timely and accurate positive fingerprint identification of  
14 applicants as a condition of issuing licenses, permits, or  
15 certificates of approval for persons to operate or provide direct  
16 care services in a child care center or family child care home.  
17 Therefore, the Legislature supports the use of the fingerprint  
18 live-scan technology, as defined in the long-range plan of the  
19 Department of Justice for fully automating the processing of  
20 fingerprints and other data by the year 1999, otherwise known as  
21 the California Crime Information Intelligence System (CAL-CII),  
22 to be used for applicant fingerprints. It is the intent of the  
23 Legislature in enacting this section to require the fingerprints of  
24 those individuals whose contact with child day care facility clients  
25 may pose a risk to the children's health and safety.

26 (a) (1) Before issuing a license or special permit to any person  
27 to operate or manage a day care facility, the department shall  
28 secure from an appropriate law enforcement agency a criminal  
29 record to determine whether the applicant or any other person  
30 specified in subdivision (b) has ever been convicted of a crime  
31 other than a minor traffic violation or arrested for any crime  
32 specified in Section 290 of the Penal Code, for violating Section  
33 245 or 273.5, subdivision (b) of Section 273a or, prior to January  
34 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for  
35 any crime for which the department cannot grant an exemption if  
36 the person was convicted and the person has not been exonerated.

37 (2) The criminal history information shall include the full  
38 criminal record, if any, of those persons, and subsequent arrest  
39 information pursuant to Section 11105.2 of the Penal Code.



1 (3) Except during the 2003–04 fiscal year, neither the  
2 Department of Justice nor the department may charge a fee for the  
3 fingerprinting of an applicant who will serve six or fewer children  
4 or any family day care applicant for a license, or for obtaining a  
5 criminal record of an applicant pursuant to this section.

6 (4) The following shall apply to the criminal record  
7 information:

8 (A) If the State Department of Social Services finds that the  
9 applicant or any other person specified in subdivision (b) has been  
10 convicted of a crime, other than a minor traffic violation, the  
11 application shall be denied, unless the director grants an  
12 exemption pursuant to subdivision (f).

13 (B) If the State Department of Social Services finds that the  
14 applicant, or any other person specified in subdivision (b), is  
15 awaiting trial for a crime other than a minor traffic violation, the  
16 State Department of Social Services may cease processing the  
17 application until the conclusion of the trial.

18 (C) If no criminal record information has been recorded, the  
19 Department of Justice shall provide the applicant and the State  
20 Department of Social Services with a statement of that fact.

21 (D) If the State Department of Social Services finds after  
22 licensure that the licensee, or any other person specified in  
23 paragraph (2) of subdivision (b), has been convicted of a crime  
24 other than a minor traffic violation, the license may be revoked,  
25 unless the director grants an exemption pursuant to subdivision (f).

26 (E) An applicant and any other person specified in subdivision  
27 (b) shall submit a second set of fingerprints to the Department of  
28 Justice, for the purpose of searching the records of the Federal  
29 Bureau of Investigation, in addition to the search required by  
30 subdivision (a). If an applicant meets all other conditions for  
31 licensure, except receipt of the Federal Bureau of Investigation’s  
32 criminal history information for the applicant and persons listed in  
33 subdivision (b), the department may issue a license if the applicant  
34 and each person described by subdivision (b) has signed and  
35 submitted a statement that he or she has never been convicted of  
36 a crime in the United States, other than a traffic infraction as  
37 defined in paragraph (1) of subdivision (a) of Section 42001 of the  
38 Vehicle Code. If, after licensure, the department determines that  
39 the licensee or person specified in subdivision (b) has a criminal  
40 record, the license may be revoked pursuant to Section 1596.885.



1 The department may also suspend the license pending an  
2 administrative hearing pursuant to Section 1596.886.  
3 (b) (1) In addition to the applicant, this section shall be  
4 applicable to criminal convictions of the following persons:  
5 (A) Adults responsible for administration or direct supervision  
6 of staff.  
7 (B) Any person, other than a child, residing in the facility.  
8 (C) Any person who provides care and supervision to the  
9 children.  
10 (D) Any staff person, volunteer, or employee who has contact  
11 with the children.  
12 (i) A volunteer providing time-limited specialized services  
13 shall be exempt from the requirements of this subdivision if this  
14 person is directly supervised by the licensee or a facility employee  
15 with a criminal record clearance or exemption, the volunteer  
16 spends no more than 16 hours per week at the facility, and the  
17 volunteer is not left alone with children in care.  
18 (ii) A student enrolled or participating at an accredited  
19 educational institution shall be exempt from the requirements of  
20 this subdivision if the student is directly supervised by the licensee  
21 or a facility employee with a criminal record clearance or  
22 exemption, the facility has an agreement with the educational  
23 institution concerning the placement of the student, the student  
24 spends no more than 16 hours per week at the facility, and the  
25 student is not left alone with children in care.  
26 (iii) A volunteer who is a relative, legal guardian, or foster  
27 parent of a client in the facility shall be exempt from the  
28 requirements of this subdivision.  
29 (iv) A contracted repair person retained by the facility, if not  
30 left alone with children in care, shall be exempt from the  
31 requirements of this subdivision.  
32 (v) Any person similar to those described in this subdivision,  
33 as defined by the department in regulations.  
34 (E) If the applicant is a firm, partnership, association, or  
35 corporation, the chief executive officer, other person serving in  
36 like capacity, or a person designated by the chief executive officer  
37 as responsible for the operation of the facility, as designated by the  
38 applicant agency.  
39 (F) If the applicant is a local educational agency, the president  
40 of the governing board, the school district superintendent, or a



1 person designated to administer the operation of the facility, as  
2 designated by the local educational agency.

3 (G) Additional officers of the governing body of the applicant,  
4 or other persons with a financial interest in the applicant, as  
5 determined necessary by the department by regulation. The  
6 criteria used in the development of these regulations shall be based  
7 on the person's capability to exercise substantial influence over the  
8 operation of the facility.

9 (H) This section does not apply to employees of child care and  
10 development programs under contract with the State Department  
11 of Education who have completed a criminal records clearance as  
12 part of an application to the Commission on Teacher  
13 Credentialing, and who possess a current credential or permit  
14 issued by the commission, including employees of child care and  
15 development programs that serve both children subsidized under,  
16 and children not subsidized under, a State Department of  
17 Education contract. The Commission on Teacher Credentialing  
18 shall notify the department upon revocation of a current credential  
19 or permit issued to an employee of a child care and development  
20 program under contract with the State Department of Education.

21 (I) This section does not apply to employees of a child care and  
22 development program operated by a school district, county office  
23 of education, or community college district under contract with the  
24 State Department of Education who have completed a criminal  
25 record clearance as a condition of employment. The school  
26 district, county office of education, or community college district  
27 upon receiving information that the status of an employee's  
28 criminal record clearance has changed shall submit that  
29 information to the department.

30 (2) Nothing in this subdivision shall prevent a licensee from  
31 requiring a criminal record clearance of any individuals exempt  
32 from the requirements under this subdivision.

33 (c) (1) (A) Subsequent to initial licensure, any person  
34 specified in subdivision (b) and not exempted from fingerprinting  
35 shall, as a condition to employment, residence, or presence in a  
36 child day care facility be fingerprinted and sign a declaration under  
37 penalty of perjury regarding any prior criminal conviction. The  
38 licensee shall submit these fingerprints to the Department of  
39 Justice, along with a second set of fingerprints for the purpose of  
40 searching the records of the Federal Bureau of Investigation, or to



1 comply with paragraph (1) of subdivision (h), prior to the person's  
2 employment, residence, or initial presence in the child day care  
3 facility.

4 (B) These fingerprints shall be on a card provided by the State  
5 Department of Social Services for the purpose of obtaining a  
6 permanent set of fingerprints and submitted to the Department of  
7 Justice by the licensee or sent by electronic transmission in a  
8 manner approved by the State Department of Social Services. A  
9 licensee's failure to submit fingerprints to the Department of  
10 Justice, or to comply with paragraph (1) of subdivision (h), as  
11 required in this section, shall result in the citation of a deficiency,  
12 and an immediate assessment of civil penalties in the amount of  
13 one hundred dollars (\$100) per violation, per day; *for a maximum*  
14 *of five days, unless the violation is a second or subsequent*  
15 *violation within a 12-month period in which case the civil*  
16 *penalties shall be in the amount of one hundred dollars (\$100) per*  
17 *violation* for a maximum of 30 days, and shall be grounds for  
18 disciplining the licensee pursuant to Section 1596.885 or Section  
19 1596.886. The State Department of Social Services may assess  
20 civil penalties for continued violations permitted by Sections  
21 1596.99 and 1597.62. The fingerprints shall then be submitted to  
22 the State Department of Social Services for processing. Within 14  
23 calendar days of the receipt of the fingerprints, the Department of  
24 Justice shall notify the State Department of Social Services of the  
25 criminal record information, as provided in this subdivision. If no  
26 criminal record information has been recorded, the Department of  
27 Justice shall provide the licensee and the State Department of  
28 Social Services with a statement of that fact within 14 calendar  
29 days of receipt of the fingerprints. If new fingerprints are required  
30 for processing, the Department of Justice shall, within 14 calendar  
31 days from the date of receipt of the fingerprints, notify the licensee  
32 that the fingerprints were illegible.

33 (C) Documentation of the individual's clearance or exemption  
34 shall be maintained by the licensee, and shall be available for  
35 inspection. When live-scan technology is operational, as defined  
36 in Section 1522.04, the Department of Justice shall notify the  
37 department, as required by that section, and notify the licensee by  
38 mail within 14 days of electronic transmission of the fingerprints  
39 to the Department of Justice, if the person has no criminal record.  
40 Any violation of the regulations adopted pursuant to Section



1 1522.04 shall result in the citation of a deficiency and an  
2 immediate assessment of civil penalties in the amount of one  
3 hundred dollars (\$100) per violation. The department may assess  
4 civil penalties for continued violations, as permitted by Sections  
5 1596.99 and 1597.62.

6 (2) Except for persons specified in paragraph (2) of subdivision  
7 (b), the licensee shall endeavor to ascertain the previous  
8 employment history of persons required to be fingerprinted under  
9 this subdivision. If it is determined by the department, on the basis  
10 of fingerprints submitted to the Department of Justice, that the  
11 person has been convicted of a sex offense against a minor, an  
12 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the  
13 Penal Code, or a felony, the State Department of Social Services  
14 shall notify the licensee to act immediately to terminate the  
15 person's employment, remove the person from the child day care  
16 facility, or bar the person from entering the child day care facility.  
17 The department may subsequently grant an exemption pursuant to  
18 subdivision (f). If the conviction was for another crime except a  
19 minor traffic violation, the licensee shall, upon notification by the  
20 State Department of Social Services, act immediately to either (1)  
21 terminate the person's employment, remove the person from the  
22 child day care facility, or bar the person from entering the child day  
23 care facility; or (2) seek an exemption pursuant to subdivision (f).  
24 The department shall determine if the person shall be allowed to  
25 remain in the facility until a decision on the exemption is rendered.  
26 A licensee's failure to comply with the department's prohibition  
27 of employment, contact with clients, or presence in the facility as  
28 required by this paragraph shall result in a citation of deficiency  
29 and an immediate assessment of civil penalties by the department  
30 against the licensee, in the amount of one hundred dollars (\$100)  
31 per violation, per day; *for a maximum of five days, unless the*  
32 *violation is a second or subsequent violation within a 12-month*  
33 *period in which case the civil penalties shall be in the amount of*  
34 *one hundred dollars (\$100) per violation* for a maximum of 30  
35 days, and shall be grounds for disciplining the licensee pursuant  
36 to Section 1596.885 or 1596.886.

37 (3) The department may issue an exemption on its own motion  
38 pursuant to subdivision (f) if the person's criminal history  
39 indicates that the person is of good character based on the age,  
40 seriousness, and frequency of the conviction or convictions. The



1 department, in consultation with interested parties, shall develop  
2 regulations to establish the criteria to grant an exemption pursuant  
3 to this paragraph.

4 (4) Concurrently with notifying the licensee pursuant to  
5 paragraph (3), the department shall notify the affected individual  
6 of his or her right to seek an exemption pursuant to subdivision (f).  
7 The individual may seek an exemption only if the licensee  
8 terminates the person's employment or removes the person from  
9 the facility after receiving notice from the department pursuant to  
10 paragraph (3).

11 (d) (1) For purposes of this section or any other provision of  
12 this chapter, a conviction means a plea or verdict of guilty or a  
13 conviction following a plea of nolo contendere. Any action that the  
14 department is permitted to take following the establishment of a  
15 conviction may be taken when the time for appeal has elapsed,  
16 when the judgment of conviction has been affirmed on appeal, or  
17 when an order granting probation is made suspending the  
18 imposition of sentence, notwithstanding a subsequent order  
19 pursuant to Sections 1203.4 and 1203.4a of the Penal Code  
20 permitting the person to withdraw his or her plea of guilty and to  
21 enter a plea of not guilty, or setting aside the verdict of guilty, or  
22 dismissing the accusation, information, or indictment. For  
23 purposes of this section or any other provision of this chapter, the  
24 record of a conviction, or a copy thereof certified by the clerk of  
25 the court or by a judge of the court in which the conviction  
26 occurred, shall be conclusive evidence of the conviction. For  
27 purposes of this section or any other provision of this chapter, the  
28 arrest disposition report certified by the Department of Justice, or  
29 documents admissible in a criminal action pursuant to Section  
30 969b of the Penal Code, shall be prima facie evidence of  
31 conviction, notwithstanding any other provision of law  
32 prohibiting the admission of these documents in a civil or  
33 administrative action.

34 (2) For purposes of this section or any other provision of this  
35 chapter, the department shall consider criminal convictions from  
36 another state or federal court as if the criminal offense was  
37 committed in this state.

38 (e) The State Department of Social Services may not use a  
39 record of arrest to deny, revoke, or terminate any application,  
40 license, employment, or residence unless the department



1 investigates the incident and secures evidence, whether or not  
2 related to the incident of arrest, that is admissible in an  
3 administrative hearing to establish conduct by the person that may  
4 pose a risk to the health and safety of any person who is or may  
5 become a client. The State Department of Social Services is  
6 authorized to obtain any arrest or conviction records or reports  
7 from any law enforcement agency as necessary to the performance  
8 of its duties to inspect, license, and investigate community care  
9 facilities and individuals associated with a community care  
10 facility.

11 (f) (1) After review of the record, the director may grant an  
12 exemption from disqualification for a license or special permit as  
13 specified in paragraphs (1) and (4) of subdivision (a), or for  
14 employment, residence, or presence in a child day care facility as  
15 specified in paragraphs (3), (4), and (5) of subdivision (c) if the  
16 director has substantial and convincing evidence to support a  
17 reasonable belief that the applicant and the person convicted of the  
18 crime, if other than the applicant, are of good character so as to  
19 justify issuance of the license or special permit or granting an  
20 exemption for purposes of subdivision (c). However, an  
21 exemption may not be granted pursuant to this subdivision if the  
22 conviction was for any of the following offenses:

23 (A) An offense specified in Section 220, 243.4, or 264.1,  
24 subdivision (a) of Section 273a or, prior to January 1, 1994,  
25 paragraph (1) of Section 273a, Section 273d, 288, or 289,  
26 subdivision (a) of Section 290, or Section 368 of the Penal Code,  
27 or was a conviction of another crime against an individual  
28 specified in subdivision (c) of Section 667.5 of the Penal Code.

29 (B) A felony offense specified in Section 729 of the Business  
30 and Professions Code or Section 206 or 215, subdivision (a) of  
31 Section 347, subdivision (b) of Section 417, or subdivision (a) or  
32 (b) of Section 451 of the Penal Code.

33 (2) The department may not prohibit a person from being  
34 employed or having contact with clients in a facility on the basis  
35 of a denied criminal record exemption request or arrest  
36 information unless the department complies with the requirements  
37 of Section 1596.8897.

38 (g) Upon request of the licensee, who shall enclose a  
39 self-addressed stamped postcard for this purpose, the Department  
40 of Justice shall verify receipt of the fingerprints.



1 (h) (1) For the purposes of compliance with this section, the  
2 department may permit an individual to transfer a current criminal  
3 record clearance, as defined in subdivision (a), from one facility  
4 to another, as long as the criminal record clearance has been  
5 processed through a state licensing district office, and is being  
6 transferred to another facility licensed by a state licensing district  
7 office. The request shall be in writing to the department, and shall  
8 include a copy of the person's driver's license or valid  
9 identification card issued by the Department of Motor Vehicles, or  
10 a valid photo identification issued by another state or the United  
11 States government if the person is not a California resident. Upon  
12 request of the licensee, who shall enclose a self-addressed stamped  
13 envelope for this purpose, the department shall verify whether the  
14 individual has a clearance that can be transferred.

15 (2) The State Department of Social Services shall hold criminal  
16 record clearances in its active files for a minimum of two years  
17 after an employee is no longer employed at a licensed facility in  
18 order for the criminal record clearances to be transferred.

19 (i) Amendments to this section made in the 1998 calendar year  
20 shall be implemented commencing 60 days after the effective date  
21 of the act amending this section in the 1998 calendar year, except  
22 those provisions for the submission of fingerprints for searching  
23 the records of the Federal Bureau of Investigation, which shall be  
24 implemented commencing January 1, 1999.

25 *SEC. 5. Section 11105 of the Penal Code is amended to read:*

26 11105. (a) (1) The Department of Justice shall maintain state  
27 summary criminal history information.

28 (2) As used in this section:

29 (A) "State summary criminal history information" means the  
30 master record of information compiled by the Attorney General  
31 pertaining to the identification and criminal history of any person,  
32 such as name, date of birth, physical description, fingerprints,  
33 photographs, date of arrests, arresting agencies and booking  
34 numbers, charges, dispositions, and similar data about the person.

35 (B) "State summary criminal history information" does not  
36 refer to records and data compiled by criminal justice agencies  
37 other than the Attorney General, nor does it refer to records of  
38 complaints to or investigations conducted by, or records of  
39 intelligence information or security procedures of, the office of the  
40 Attorney General and the Department of Justice.



1 (b) The Attorney General shall furnish state summary criminal  
2 history information to any of the following, if needed in the course  
3 of their duties, provided that when information is furnished to  
4 assist an agency, officer, or official of state or local government,  
5 a public utility, or any other entity, in fulfilling employment,  
6 certification, or licensing duties, Chapter 1321 of the Statutes of  
7 1974 and Section 432.7 of the Labor Code shall apply:

8 (1) The courts of the state.

9 (2) Peace officers of the state as defined in Section 830.1,  
10 subdivisions (a) and (e) of Section 830.2, subdivision (a) of  
11 Section 830.3, subdivisions (a) and (b) of Section 830.5, and  
12 subdivision (a) of Section 830.31.

13 (3) District attorneys of the state.

14 (4) Prosecuting city attorneys of any city within the state.

15 (5) Probation officers of the state.

16 (6) Parole officers of the state.

17 (7) A public defender or attorney of record when representing  
18 a person in proceedings upon a petition for a certificate of  
19 rehabilitation and pardon pursuant to Section 4852.08.

20 (8) A public defender or attorney of record when representing  
21 a person in a criminal case and if authorized access by statutory or  
22 decisional law.

23 (9) Any agency, officer, or official of the state if the criminal  
24 history information is required to implement a statute or regulation  
25 that expressly refers to specific criminal conduct applicable to the  
26 subject person of the state summary criminal history information,  
27 and contains requirements or exclusions, or both, expressly based  
28 upon that specified criminal conduct.

29 (10) Any city or county, or city and county, or district, or any  
30 officer, or official thereof if access is needed in order to assist that  
31 agency, officer, or official in fulfilling employment, certification,  
32 or licensing duties, and if the access is specifically authorized by  
33 the city council, board of supervisors, or governing board of the  
34 city, county, or district if the criminal history information is  
35 required to implement a statute, ordinance, or regulation that  
36 expressly refers to specific criminal conduct applicable to the  
37 subject person of the state summary criminal history information,  
38 and contains requirements or exclusions, or both, expressly based  
39 upon that specified criminal conduct.



1 (11) The subject of the state summary criminal history  
2 information under procedures established under Article 5  
3 (commencing with Section 11120) of Chapter 1 of Title 1 of Part  
4 4.

5 (12) Any person or entity when access is expressly authorized  
6 by statute if the criminal history information is required to  
7 implement a statute or regulation that expressly refers to specific  
8 criminal conduct applicable to the subject person of the state  
9 summary criminal history information, and contains requirements  
10 or exclusions, or both, expressly based upon that specified  
11 criminal conduct.

12 (13) Health officers of a city, county, or city and county, or  
13 district, when in the performance of their official duties enforcing  
14 Section 120175 of the Health and Safety Code.

15 (14) Any managing or supervising correctional officer of a  
16 county jail or other county correctional facility.

17 (15) Any humane society, or society for the prevention of  
18 cruelty to animals, for the specific purpose of complying with  
19 Section 14502 of the Corporations Code for the appointment of  
20 level 1 humane officers.

21 (16) Local child support agencies established by Section 17304  
22 of the Family Code. When a local child support agency closes a  
23 support enforcement case containing summary criminal history  
24 information, the agency shall delete or purge from the file and  
25 destroy any documents or information concerning or arising from  
26 offenses for or of which the parent has been arrested, charged, or  
27 convicted, other than for offenses related to the parent's having  
28 failed to provide support for minor children, consistent with the  
29 requirements of Section 17531 of the Family Code.

30 (17) County child welfare agency personnel who have been  
31 delegated the authority of county probation officers to access state  
32 summary criminal history information pursuant to Section 272 of  
33 the Welfare and Institutions Code for the purposes specified in  
34 Section 16504.5 of the Welfare and Institutions Code. Information  
35 from criminal history records provided pursuant to this  
36 subdivision shall not be used for any purposes other than those  
37 specified in this section and Section 16504.5 of the Welfare and  
38 Institutions Code. When an agency obtains records obtained both  
39 on the basis of name checks and fingerprint checks, final



1 placement decisions shall be based only on the records obtained  
2 pursuant to the fingerprint check.

3 (c) The Attorney General may furnish state summary criminal  
4 history information upon a showing of a compelling need to any  
5 of the following, provided that when information is furnished to  
6 assist an agency, officer, or official of state or local government,  
7 a public utility, or any other entity, in fulfilling employment,  
8 certification, or licensing duties, Chapter 1321 of the Statutes of  
9 1974 and Section 432.7 of the Labor Code shall apply:

10 (1) Any public utility as defined in Section 216 of the Public  
11 Utilities Code that operates a nuclear energy facility when access  
12 is needed in order to assist in employing persons to work at the  
13 facility, provided that, if the Attorney General supplies the data,  
14 he or she shall furnish a copy of the data to the person to whom the  
15 data relates.

16 (2) To a peace officer of the state other than those included in  
17 subdivision (b).

18 (3) To a peace officer of another country.

19 (4) To public officers (other than peace officers) of the United  
20 States, other states, or possessions or territories of the United  
21 States, provided that access to records similar to state summary  
22 criminal history information is expressly authorized by a statute of  
23 the United States, other states, or possessions or territories of the  
24 United States if the information is needed for the performance of  
25 their official duties.

26 (5) To any person when disclosure is requested by a probation,  
27 parole, or peace officer with the consent of the subject of the state  
28 summary criminal history information and for purposes of  
29 furthering the rehabilitation of the subject.

30 (6) The courts of the United States, other states, or territories  
31 or possessions of the United States.

32 (7) Peace officers of the United States, other states, or  
33 territories or possessions of the United States.

34 (8) To any individual who is the subject of the record requested  
35 if needed in conjunction with an application to enter the United  
36 States or any foreign nation.

37 (9) Any public utility as defined in Section 216 of the Public  
38 Utilities Code, if access is needed in order to assist in employing  
39 current or prospective employees who in the course of their  
40 employment may be seeking entrance to private residences. The



1 information provided shall be limited to the record of convictions  
2 and any arrest for which the person is released on bail or on his or  
3 her own recognizance pending trial.

4 If the Attorney General supplies the data pursuant to this  
5 paragraph, the Attorney General shall furnish a copy of the data to  
6 the current or prospective employee to whom the data relates.

7 Any information obtained from the state summary criminal  
8 history is confidential and the receiving public utility shall not  
9 disclose its contents, other than for the purpose for which it was  
10 acquired. The state summary criminal history information in the  
11 possession of the public utility and all copies made from it shall be  
12 destroyed not more than 30 days after employment or promotion  
13 or transfer is denied or granted, except for those cases where a  
14 current or prospective employee is out on bail or on his or her own  
15 recognizance pending trial, in which case the state summary  
16 criminal history information and all copies shall be destroyed not  
17 more than 30 days after the case is resolved.

18 A violation of this paragraph is a misdemeanor, and shall give  
19 the current or prospective employee who is injured by the violation  
20 a cause of action against the public utility to recover damages  
21 proximately caused by the violations. Any public utility's request  
22 for state summary criminal history information for purposes of  
23 employing current or prospective employees who may be seeking  
24 entrance to private residences in the course of their employment  
25 shall be deemed a "compelling need" as required to be shown in  
26 this subdivision.

27 Nothing in this section shall be construed as imposing any duty  
28 upon public utilities to request state summary criminal history  
29 information on any current or prospective employees.

30 (10) To any campus of the California State University or the  
31 University of California, or any four-year college or university  
32 accredited by a regional accreditation organization approved by  
33 the United States Department of Education, if needed in  
34 conjunction with an application for admission by a convicted felon  
35 to any special education program for convicted felons, including,  
36 but not limited to, university alternatives and halfway houses.  
37 Only conviction information shall be furnished. The college or  
38 university may require the convicted felon to be fingerprinted, and  
39 any inquiry to the department under this section shall include the



1 convicted felon’s fingerprints and any other information specified  
2 by the department.

3 (d) Whenever an authorized request for state summary criminal  
4 history information pertains to a person whose fingerprints are on  
5 file with the Department of Justice and the department has no  
6 criminal history of that person, and the information is to be used  
7 for employment, licensing, or certification purposes, the  
8 fingerprint card accompanying the request for information, if any,  
9 may be stamped “no criminal record” and returned to the person  
10 or entity making the request.

11 (e) Whenever state summary criminal history information is  
12 furnished as the result of an application and is to be used for  
13 employment, licensing, or certification purposes, the Department  
14 of Justice may charge the person or entity making the request a fee  
15 that it determines to be sufficient to reimburse the department for  
16 the cost of furnishing the information. In addition, the Department  
17 of Justice may add a surcharge to the fee to fund maintenance and  
18 improvements to the systems from which the information is  
19 obtained. Notwithstanding any other law, any person or entity  
20 required to pay a fee to the department for information received  
21 under this section may charge the applicant a fee sufficient to  
22 reimburse the person or entity for this expense. All moneys  
23 received by the department pursuant to this section, Sections  
24 11105.3 and 12054 of the Penal Code, and Section 13588 of the  
25 Education Code shall be deposited in a special account in the  
26 General Fund to be available for expenditure by the department to  
27 offset costs incurred pursuant to those sections and for  
28 maintenance and improvements to the systems from which the  
29 information is obtained upon appropriation by the Legislature.

30 (f) Whenever there is a conflict, the processing of criminal  
31 fingerprints and fingerprints of applicants for security guard or  
32 alarm agent registrations or firearms qualification permits  
33 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4  
34 of the Business and Professions Code shall take priority over the  
35 processing of other applicant fingerprints.

36 (g) It is not a violation of this section to disseminate statistical  
37 or research information obtained from a record, provided that the  
38 identity of the subject of the record is not disclosed.

39 (h) It is not a violation of this section to include information  
40 obtained from a record in (1) a transcript or record of a judicial or



1 administrative proceeding or (2) any other public record if the  
2 inclusion of the information in the public record is authorized by  
3 a court, statute, or decisional law.

4 (i) Notwithstanding any other law, the Department of Justice or  
5 any state or local law enforcement agency may require the  
6 submission of fingerprints for the purpose of conducting summary  
7 criminal history information checks that are authorized by law.

8 (j) The state summary criminal history information shall  
9 include any finding of mental incompetence pursuant to Chapter  
10 6 (commencing with Section 1367) of Title 10 of Part 2 arising out  
11 of a complaint charging a felony offense specified in Section 290.

12 (k) (1) This subdivision shall apply whenever state or federal  
13 summary criminal history information is furnished by the  
14 Department of Justice as the result of an application by an  
15 authorized agency or organization and is to be used for peace  
16 officer employment or certification purposes. As used in this  
17 subdivision, a peace officer is defined in Chapter 4.5 (commencing  
18 with Section 830) of Title 3 of Part 2.

19 (2) Notwithstanding any other provision of law, whenever state  
20 summary criminal history information is furnished pursuant to  
21 paragraph (1), the Department of Justice shall disseminate the  
22 following information:

23 (A) Every conviction rendered against the applicant.

24 (B) Every arrest for an offense for which the applicant is  
25 presently awaiting trial, whether the applicant is incarcerated or  
26 has been released on bail or on his or her own recognizance  
27 pending trial.

28 (C) Every arrest for an offense for which the records of the  
29 Department of Justice do not contain a disposition, provided that  
30 the Department of Justice first makes a genuine effort to determine  
31 the disposition of the arrest.

32 (D) Every detention or successful diversion.

33 (l) (1) This subdivision shall apply whenever state or federal  
34 summary criminal history information is furnished by the  
35 Department of Justice as the result of an application by a criminal  
36 justice agency or organization as defined in Section 13101 of the  
37 Penal Code, and the criminal history information is to be used for  
38 criminal justice employment, licensing, or certification purposes.

39 (2) Notwithstanding any other provision of law, whenever state  
40 summary criminal history information is furnished pursuant to



1 paragraph (1), the Department of Justice shall disseminate the  
2 following information:

3 (A) Every conviction rendered against the applicant.

4 (B) Every arrest for an offense for which the applicant is  
5 presently awaiting trial, whether the applicant is incarcerated or  
6 has been released on bail or on his or her own recognizance  
7 pending trial.

8 (C) Every arrest for an offense for which the records of the  
9 Department of Justice do not contain a disposition, provided that  
10 the Department of Justice first makes a genuine effort to determine  
11 the disposition of the arrest.

12 (m) (1) This subdivision shall apply whenever state or federal  
13 summary criminal history information is furnished by the  
14 Department of Justice as the result of an application by an  
15 authorized agency or organization and it is to be used for  
16 employment, licensing, or certification purposes pursuant to any  
17 of the following sections, or pursuant to any statute that  
18 incorporates the criteria of any of these sections by reference:

19 Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and  
20 Safety Code.

21 (2) Notwithstanding any other provision of law, whenever state  
22 summary criminal history information is furnished pursuant to  
23 paragraph (1), the Department of Justice shall disseminate the  
24 following information:

25 (A) Every conviction of an offense rendered against the  
26 applicant.

27 (B) Every arrest for an offense for which the applicant is  
28 presently awaiting trial, whether the applicant is incarcerated or  
29 has been released on bail or on his or her own recognizance  
30 pending trial.

31 (C) Every arrest for an offense for which the Department of  
32 Social Services is required by paragraph (1) of subdivision (a) of  
33 Section 1522 of the Health and Safety Code to determine if an  
34 applicant has been arrested. However, if the records of the  
35 Department of Justice do not contain a disposition for an arrest, the  
36 Department of Justice shall first make a genuine effort to  
37 determine the disposition of the arrest.

38 (3) Notwithstanding the requirements of the sections  
39 referenced in paragraph (1) of this subdivision, the Department of  
40 Justice shall not disseminate information about an arrest



1 subsequently deemed a detention or an arrest that resulted in either  
2 the successful completion of a diversion program or exoneration.

3 (4) *Notwithstanding any other provision of law, upon request*  
4 *from the State Department of Social Services or a county acting as*  
5 *an agent of the State Department of Social Services, the*  
6 *Department of Justice shall substitute or add either the State*  
7 *Department of Social Services or the county as an authorized*  
8 *agency to receive federal and state summary criminal history*  
9 *information for an applicant, including subsequent arrest and*  
10 *conviction notifications.*

11 (n) (1) This subdivision shall apply whenever state or federal  
12 summary criminal history information is furnished by the  
13 Department of Justice as the result of an application by an agency,  
14 organization, or individual pursuant to Section 11105.3 or 11105.4  
15 of this code, or Section 15660 of the Welfare and Institutions Code  
16 and is to be used for employment, licensing, or certification  
17 purposes.

18 (2) With the exception of applications submitted by  
19 transportation companies authorized pursuant to Section 11105.3,  
20 and notwithstanding any other provision of law, whenever state  
21 summary criminal history information is furnished pursuant to  
22 paragraph (1), the Department of Justice shall disseminate the  
23 following information:

24 (A) Every conviction rendered against the applicant for a  
25 violation or attempted violation of any offense specified in  
26 subdivision (a) of Section 15660 of the Welfare and Institutions  
27 Code. However, with the exception of those offenses for which  
28 registration is required pursuant to Section 290, the Department of  
29 Justice shall not disseminate information pursuant to this  
30 subdivision unless the conviction occurred within 10 years of the  
31 date of the application or the conviction is over 10 years old but  
32 the subject of the request was incarcerated within 10 years of the  
33 application.

34 (B) Every arrest for a violation or attempted violation of an  
35 offense specified in subdivision (a) of Section 15660 of the  
36 Welfare and Institutions Code for which the applicant is presently  
37 awaiting trial, whether the applicant is incarcerated or has been  
38 released on bail or on his or her own recognizance pending trial.

39 (o) (1) This subdivision shall apply whenever state or federal  
40 summary criminal history information is furnished by the



1 Department of Justice as the result of an application by an agency  
2 or organization pursuant to Section 777.5 of the Financial Code  
3 and is to be used for employment, licensing, or certification  
4 purposes.

5 (2) Notwithstanding any other provision of law, whenever state  
6 summary criminal history information is furnished pursuant to  
7 paragraph (1), the Department of Justice shall disseminate the  
8 following information:

9 (A) Every conviction rendered against the applicant for a  
10 violation or attempted violation of any offense specified in Section  
11 777.5 of the Financial Code.

12 (B) Every arrest for a violation or attempted violation of an  
13 offense specified in Section 777.5 of the Financial Code for which  
14 the applicant is presently awaiting trial, whether the applicant is  
15 incarcerated or has been released on bail or on his or her own  
16 recognizance pending trial.

17 (p) (1) This subdivision shall apply whenever state or federal  
18 criminal history information is furnished by the Department of  
19 Justice as the result of an application by an agency, organization,  
20 or individual not defined in subdivision (k), (l), (m), (n), or (o), or  
21 by a transportation company authorized pursuant to Section  
22 11105.3, and is to be used for employment, licensing, or  
23 certification purposes.

24 (2) Notwithstanding any other provisions of law, whenever  
25 state summary criminal history information is furnished pursuant  
26 to paragraph (1), the Department of Justice shall disseminate the  
27 following information:

28 (A) Every conviction rendered against the applicant.

29 (B) Every arrest for an offense for which the applicant is  
30 presently awaiting trial, whether the applicant is incarcerated or  
31 has been released on bail or on his or her own recognizance  
32 pending trial.

33 (q) All agencies, organizations, or individuals defined in  
34 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the  
35 Department of Justice for subsequent arrest notification pursuant  
36 to Section 11105.2. This subdivision shall not supersede sections  
37 that mandate an agency, organization, or individual to contract  
38 with the Department of Justice for subsequent arrest notification  
39 pursuant to Section 11105.2.



- 1 (r) Nothing in this section shall be construed to mean that the
- 2 Department of Justice shall cease compliance with any other
- 3 statutory notification requirements.

O

